PART XII Judgements & Doctrines

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CHAPTER 90 Landmark Judgements and Their Impact

ROMESH THAPPAR CASE (1950)

Name of the Case	:	Romesh Thappar vs. State of Madras
Year of Judgement	:	1950
Popular Name	:	Cross Roads case
Related Topic/Issue	:	Freedom of the press
Related Article/ Schedule	:	19

Supreme Court Judgement: It held that the freedom of speech and expression under Article 19(1)(a) includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. It also ruled that without liberty of circulation, the publication would be of little value. Therefore, the order of the Madras government banning the entry and circulation of the weekly English Journal Cross Roads published at Bombay was declared as unconstitutional and void. The Madras government had issued the banning order under the provisions of Section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949. The Supreme Court observed that the freedom of speech and freedom of the press lay at the foundation of all democratic organisations, because without free political discussion no public education (which is so essential for the proper functioning of the process of popular government) is possible.

Impact of the Judgement: As a sequel to this judgement, the 1st Amendment Act (1951) added "public order" as a reasonable restriction under Article 19(2) on the freedom of speech and expression. The Supreme Court held that restrictions on the freedom of speech and expression could be imposed only on the grounds mentioned in Article 19(2). Accordingly, the court refused to permit restrictions on the ground of public order because it was not mentioned in Article 19(2). It said that the ordinary or local breaches of public order were no grounds for imposing restrictions on the freedom of speech and expression. It further observed that the term "public order" has wide connotation and signifies that state of tranquility which prevails among the members of political society as a result of internal regulations enforced by the government which they have established.

A.K. GOPALAN CASE (1950)

Name of the Case	:	A.K. Gopalan vs. State of Madras
Year of Judgement	:	1950
Popular Name	:	Preventive Detention case
Related Topic/ Issue	:	Procedure established by law
Related Article/ Schedule	:	21 & 22

Supreme Court Judgement: It invalidated Section 14 of the impugned Preventive Detention Act (1950) on the ground that it violates the fundamental right guaranteed under Article 22. It said that the omission of this section will not change the nature or the structure or the object of the legislation. Therefore, it declared the rest of the Act as valid and effective. Further, it held that the expression 'personal liberty' under Article 21 means liberty of the physical body, i.e., freedom from physical restraint or detention. Moreover, it ruled that Article 21 is a protection only against the executive and not against the legislature.

Impact of the Judgement: In this judgement, the Supreme Court has taken a narrow (restrictive) interpretation of the Article 21. In other words, the Supreme Court has adopted a 'textualist approach' in the interpretation of the constitution. It held that the word 'law' in Article 21 was used in the sense of state-made law and not in the sense of jus naturale i.e., the principles of natural justice. Hence, it declared that the expression 'procedure established by law' in Article 21 cannot be interpreted to mean the same thing as that of the American expression of the 'due process of law'. This declaration, in effect, amounted to holding that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action. This judgement held the field for nearly three decades (1950 to 1978). This judicial interpretation reached its logical end in *A.D.M. Jabalpur* case[1] (1976). But, in *Maneka Gandhi* case[2] (1978), the Supreme Court overruled the above judgement by taking a wider interpretation of the Article 21.

[1] *A.D.M. Jabalpur* vs. *Shivakant Shukla* (1976). This case is popularly known as the Habeas Corpus case.

[2] *Maneka Gandhi* vs. *Union of India* (1978). This case is popularly known as the Personal Liberty case.

CHAMPAKAM DORAIRAJAN CASE (1951)

Name of the Case	:	State of Madras vs. Champakam Dorairajan
Year of Judgement	:	1951
Popular Name	:	–
Related Topic/ Issue	:	Communal reservation in admission to educational institutions
Related Article/ Schedule	:	15, 29 & 46

Supreme Court Judgement: It affirmed the judgement of the Madras High Court. It struck down the order issued by the Madras Government (known as the Communal GO) that had provided for the proportionate reservation of seats in the government medical and engineering colleges for different communities with the object of promoting the educational interest of the backward classes under Article 46. It held that the communal GO was based on religion, race and caste and hence was violative of Articles 15(1) and 29(2). Further, it declared that the directive principles cannot in any way override or abridge the fundamental rights. It also stated that the directive principles have to conform to and run as subsidiary to the fundamental rights.

Impact of the Judgement: This judgement led to the insertion of a new Clause (4) in Article 15 by the 1st Amendment Act (1951). This clause permits the state to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs. In this way, the effect of this judgement was nullified.

SHANKARI PRASAD CASE (1951)

Name of the Case	:	Shankari Prasad vs. Union of India
Year of Judgement	:	1951
Popular Name	:	–
Related Topic/ Issue	:	Parliament's power to amend the constitution
Related Article/ Schedule	:	13 & 368

Supreme Court Judgement: It held that the parliament's amending power under Article 368 also includes the power to amend the fundamental rights guaranteed in Part III of the Constitution. Further, it said that a constitutional amendment act enacted to abridge or take away the fundamental rights is not void under Article 13(2). Therefore, the court upheld the validity of the 1st Amendment Act (1951), which curtailed the right to property by inserting Articles 31A and 31B.

Impact of the Judgement: In this judgement, the Supreme Court made a distinction between the legislative law (ordinary law) and the constituent law (constitutional amendment law). In other words, the court has separated the ordinary legislative power of the Parliament from that of its constituent power. It held that the word 'law' in Article 13(2) refers to an ordinary law and does not include a constituent law made under Article 368. Hence, it laid down that the Parliament can amend any provision of the constitution and rejected the view that the Fundamental Rights are inviolable. This judgement held the field for one and half decade (1951 to 1967). The Supreme Court re-affirmed the above judgement in the *Sajjan Singh* case[3] (1964). But the court overruled the above stand in the *Golak Nath* case[4] (1967).

BERUBARI UNION CASE (1960)

Name of the Case	:	Berubari Union vs. Unknown[5]
Year of Judgement	:	1960
Popular Name	:	—
Related Topic/ Issue	:	Cession of Indian Territory to a foreign state
Related Article/ Schedule	:	3, 368 & First Schedule

Supreme Court Judgement: It ruled that the power of Parliament under Article 3 to diminish the area of a state does not cover cession of Indian territory to a foreign country. It stated that Article 3 deals with the internal adjustment inter se of the territories of the constituent states of the Indian Union. Hence, Indian territory can be ceded to a foreign state only by an amendment of the constitution under Article 368, providing for the alteration of the First Schedule. Further, the court held that the Preamble is not a part of the constitution.

Impact of the Judgement: This judgement led to the enactment of the 9th Amendment Act (1960). This amendment gave effect to the transfer of certain territory known as Berubari Union (West Bengal) to Pakistan. This transfer was done as per the provisions of Indo-Pak Agreement (Nehru-Noon Agreement) of 1958, relating to Berubari Union and Exchange of Cooch-Behar Enclaves.

K.M. NANAVATI CASE (1961)

Name of the Case	:	K.M. Nanavati vs. State of Maharashtra
Year of Judgement	:	1961
Popular Name	:	—
Related Topic/ Issue	:	Jury System of trial
Related Article/ Schedule	:	—

Supreme Court Judgement: It affirmed the judgement of the Bombay High Court. It held that the conviction of the accused Nanavati under Section 302 of the Indian Penal Code and the sentence of life imprisonment passed on him by the High Court are correct. He was awarded the punishment for the murder of his wife's paramour.

[3] *Sajjan Singh* vs. *State of Rajasthan* (1964).
[4] *I.C. Golak Nath* vs. *State of Punjab* (1967).
[5] Reference by the President of India under Article 143 of the constitution on the implementation of the Indo-Pak Agreement of 1958, relating to Berubari Union and Exchange of Cooch-Behar Enclaves (1960).

Impact of the Judgement: This judgement brought out the shortcomings in the working of Jury System and led to its abolition. However, even after this case also, there were some cases of jury trials in the country. Finally, the new Code of Criminal Procedure, 1973 completely removed the system of trial by jury in India. Further, the sentenced Nanavati, after spending 3 years in prison, was granted pardon by the Governor.

I.C. GOLAK NATH CASE (1967)

Name of the Case	:	I.C. Golak Nath vs. State of Punjab
Year of Judgement	:	1967
Popular Name	:	–
Related Topic/ Issue	:	Parliament's power to amend the constitution
Related Article/ Schedule	:	13 & 368

Supreme Court Judgement: It overruled its two earlier verdicts delivered in the *Shankari Prasad* case[6] (1951) and the *Sajjan Singh* case[7] (1964). It held that the amending power under Article 368 can not be used to abridge or take away the fundamental rights guaranteed in Part III of the constitution. Further, it said that a constitutional amendment act is a law within the meaning of Article 13(2). But, the court ruled that the 1st Amendment Act (1951), the 4th Amendment Act (1955) and the 17th Amendment Act (1964) will continue to be valid for the future. In other words, the Supreme Court applied the doctrine of prospective overruling and declared that this judgement will have only prospective operation and not retrospective operation.

Impact of the Judgement: As a sequel to this judgement, the 24th Amendment Act (1971) was enacted. This amendment provided that the Parliament has the power to amend any part of the constitution including the fundamental rights in accordance with the procedure laid down in Article 368. It also provided that a constitutional amendment act will not be a law within the meaning of Article 13(2). Thus, this amendment was aimed at overriding the above judgement.

KESAVANANDA BHARATI CASE (1973)

Name of the Case	:	Kesavananda Bharati vs. State of Kerala
Year of Judgement	:	1973
Popular Name	:	Fundamental Rights case
Related Topic/ Issue	:	Parliament's power to amend the constitution
Related Article/ Schedule	:	13 & 368

Supreme Court Judgement: It overruled its earlier verdict delivered in the *Golak Nath* case[8] (1967). It held that the Parliament, by exercising its constituent power under Article 368, can amend any or all the provisions of the Constitution including those relating to the fundamental rights, but except the 'basic structure' of the constitution. It upheld the validity of the 24th Amendment Act (1971) which inserted Clause (4) in Article 13 and Clause (3) in Article 368. Further, the court held that Sections 2(a) and 2(b) of the 25th Amendment Act (1971) as valid. On the other hand, it declared the first part of Section 3 of the 25th Amendment Act (1971) as valid and the second part[9], as invalid. Moreover, the court validated the 29th Amendment Act (1971).

Impact of the Judgement: This judgement led to the emergence of the doctrine of basic structure of the constitution as a limitation on the amending power of the Parliament. The Supreme Court has applied this doctrine in subsequent cases in examining and

[6] *Shankari Prasad* vs. *Union of India* (1951).
[7] *Sajjan Singh* vs. *State of Rajasthan* (1964).
[8] *I.C. Golak Nath* vs. *State of Punjab* (1967).
[9] The second part stood as follows: "No law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy".

deciding the validity of amendments to the constitution. It also enlarged the list of elements of the basic structure in various cases. Further, as a follow-up of this judgement, the 42nd Amendment Act (1976) gave the Parliament an unlimited and uncontrolled power to amend the constitution. This is explained below in the next case.

INDIRA NEHRU GANDHI CASE (1975)

Name of the Case	:	Indira Nehru Gandhi vs. Raj Narain
Year of Judgement	:	1975
Popular Name	:	Election case
Related Topic/ Issue	:	Basic structure of the constitution
Related Article/ Schedule	:	329A (Repealed)[9a]

Supreme Court Judgement: It reaffirmed the applicability of the doctrine of basic structure of the constitution. Accordingly, it struck down clause (4) of Article 329A that was inserted by the 39th Amendment Act (1975). This provision had kept the election disputes involving the Prime Minister and the Speaker of Lok Sabha outside the jurisdiction of all courts. The Supreme Court held that this provision was beyond the amending power of the Parliament because it affected the basic structure of the constitution.

Impact of the Judgement: Following the above two judgements of the Supreme Court in Kesavananda Bharati and Indira Nehru Gandhi cases, the 42nd Amendment Act (1976) inserted two new Clauses (4) and (5) in Article 368. The Clause (4) provided that an amendment of the Constitution (including the provisions relating to the fundamental rights) made under Article 368 shall not be called in question in any court on any ground. While the Clause (5) declared that there shall be no limitation whatever on the constituent power of Parliament under Article 368. Thus, it is clear that these two Clauses were inserted in order to dilute the above doctrine of basic structure that has been held to be a limitation on the amending power of the Parliament.

[9a] Article 329A was repealed by the 44th Amendment Act (1978). Earlier, it was inserted by the 39th Amendment Act (1975).

A.D.M. JABALPUR CASE (1976)

Name of the Case	:	A.D.M. Jabalpur vs. Shivakant Shukla
Year of Judgement	:	1976
Popular Name	:	Habeas Corpus case
Related Topic/ Issue	:	Right to life and personal liberty during the emergency
Related Article/ Schedule	:	21 & 359

Supreme Court Judgement: It held that Article 21 is the sole repository of the right to life and personal liberty against the state. If the enforcement of that right is suspended by a Presidential Order under Article 359, then the detenu will have no locus standi to a writ petition for challenging the legality of his detention. In view of the Presidential Order dated 27th June 1975, no person has any locus standi to move any petition before a High Court under Article 226 for a writ of habeas corpus or any other writ to challenge the legality of a detention order on any ground. Accordingly, the court upheld the constitutional validity of Section 16A(9) of the Maintenance of Internal Security Act (MISA), 1971.

Impact of the Judgement: In this case, the Supreme Court took a restrictive meaning of right to life and personal liberty under Article 21 and gave a seriously flawed judgement. The court argued that any claim to a writ of habeas corpus on any ground amounted to the enforcement of the right to life and personal liberty which had been suspended by the Presidential Order. Consequently, it failed to fulfill its role as the defender and guarantor of the fundamental rights of the citizens during the period of emergency (1975-77). Later, the 44th Amendment Act (1978) amended Article 359 to

the effect that the enforcement of the right to life and personal liberty under Article 21 can not be suspended by a Presidential Order. In view of this amendment, the judgement delivered in this case is no longer a good law and is left only of academic importance.

MANEKA GANDHI CASE (1978)

Name of the Case	:	Maneka Gandhi vs. Union of India
Year of Judgement	:	1978
Popular Name	:	Personal Liberty case
Related Topic/Issue	:	Procedure established by law
Related Article/ Schedule	:	21

Supreme Court Judgement: It overruled its earlier judgement delivered in the *A.K. Gopalan* case[10] (1950). It declared section 10(3)(c) of the Passport Act (1967) as not violative of Articles 14, 19(1)(a) or (g) and 21 and hence, valid. But, it laid down the following propositions: (a) Articles 14, 19 and 21 are not mutually exclusive which means that a law depriving a person of 'personal liberty' has not only to stand the test of Article 21 but it must also stand the test of Articles 14 and 19; (b) The expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19; (c) The right to life under Article 21 includes all those aspects of life which go to make a man's life meaningful, complete and worth living. Further, the right to 'live' is not merely confined to physical existence but it includes within its ambit the right to live with human dignity; and (d) The expression 'procedure established by law' in Article 21 means that the procedure prescribed by law must be just, fair and reasonable and not arbitrary, fanciful or oppressive. In order that the procedure is just, fair and reasonable, the procedure should confirm to the principles of "natural justice".

Impact of the Judgement: By taking a wider interpretation of the Article 21, this judgement led to the following: (i) It introduced the American concept of 'due process of law' in Indian judicial interpretation; (ii) It firmly established the 'golden triangle' rule i.e., interrelation of Articles 14, 19 and 21; and (iii) It expanded the scope of Article 21 and paved the way for declaring a number of rights as integral part of Article 21 in the subsequent cases.

BACHAN SINGH CASE (1980)

Name of the Case	:	Bachan Singh vs. State of Punjab
Year of Judgement	:	1980
Popular Name	:	–
Related Topic/ Issue	:	Constitutional validity of death penalty
Related Article/ Schedule	:	19 & 21

Supreme Court Judgement: It ruled that the provision of death penalty (capital punishment) in Section 302 of the Indian Penal Code, as an alternative punishment for murder, is not unreasonable. Hence, this provision does not violate the letter or the ethos of Article 19. It stated that Article 19(1) does not guarantee the activity of committing a murder. Further, it held that the provision of death penalty also does not violate Article 21. It observed that Article 21 recognises the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by a valid law. However, the court held that the death penalty for murder should be an exception rather than the rule. It said that this penalty must be confined to the 'rarest of rate cases', when the alternative option is unquestionably foreclosed. Further, it said that while making the choice of death penalty, the exceptional and grave circumstances of both the crime as well as the criminal should be taken into consideration.

Impact of the Judgement: This judgement led to the laying down of the doctrine of

[10] *A.K. Gopalan* vs. *State of Madras* (1950). This case is popularly known as the Preventive Detention case.

'rarest of rare cases' for awarding the death penalty. This doctrine influenced the later judgements delivered by the Supreme Court in various subsequent cases.

MINERVA MILLS CASE (1980)

Name of the Case	:	Minerva Mills vs. Union of India
Year of Judgement	:	1980
Popular Name	:	–
Related Topic/ Issue	:	Basic structure of the constitution
Related Article/ Schedule	:	31C & 368

Supreme Court Judgement: It invalidated Clauses (4) and (5) of Article 368 which were inserted by the 42nd Amendment Act (1976). Similarly, the amendment made to Article 31C by the 42nd Amendment Act (1976) was also declared as unconstitutional. The Court said that the above changes made by the 42nd Amendment Act (1976) destroyed the basic structure of the constitution. It held the limited power of Parliament to amend the constitution, judicial review and the harmony and balance between fundamental rights and directive principles as basic features of the constitution.

Impact of the Judgement: This judgement has nullified the attempt to dilute the doctrine of the basic structure by the 42nd Amendment Act (1976). This amendment had conferred an unlimited and uncontrolled amending power on the Parliament. The Supreme Court held that the Parliament cannot, under Article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the constitution or to destroy its basic features. Further, this amendment also gave precedence to all directive principles over the fundamental rights conferred by Articles 14, 19 and 31[11]. The Supreme Court, in this regard, held that anything that destroys the balance between the fundamental rights and the directive principles will ipso facto destroy an essential element of the basic structure of the constitution.

[11]Article 31 was omitted from Part III by the 44th Amendment Act (1978).

WAMAN RAO CASE (1980)

Name of the Case	:	Waman Rao vs. Union of India
Year of Judgement	:	1980
Popular Name	:	–
Related Topic/ Issue	:	Judicial review of the ninth schedule
Related Article/ Schedule	:	368 & Ninth Schedule

Supreme Court Judgement: It held that all the amendments to the constitution which were made before 24 April 1973 (the date on which the court delivered its verdict in the *Kesavananda Bharati* case) and by which the Ninth Schedule was amended from time to time by the inclusion of various Acts and Regulations therein are valid. But, all the amendments made after 24 April 1973 are open to challenge on the ground that they are beyond the constituent power of the Parliament, since they damage the basic structure of the Constitution. In other words, the various amendments by which additions were made to the Ninth Schedule after 24 April 1973 will be valid only if they do not damage the basic structure of the constitution.

SHAH BANO CASE (1985)

Name of the Case	:	Mohd. Ahmed Khan vs. Shah Bano
Year of Judgement	:	1985
Popular Name	:	–
Related Topic/ Issue	:	Maintenance of a divorced Muslim wife
Related Article/ Schedule	:	–

Supreme Court Judgement: It upheld the judgement of the High Court of Madhya Pradesh. It ruled that a Muslim husband is liable to pay maintenance to the divorced wife beyond the period of iddat. It held that Section 125 of the Code of Criminal

Procedure, 1973 is secular in character and applies to all religions and communities. It said that this section would prevail over the personal law, in case of a conflict between the two. It also said that Mahr (or dower) does not absolve a Muslim husband from payment of maintenance to the divorced wife. Further, it also emphasized that a uniform civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.

Impact of the Judgement: This judgement led to the enactment of a new law called the Muslim Women (Protection of Rights on Divorce) Act, 1986. This Act overturned the above judgement by allowing the payment of maintenance to a divorced wife only during the period of iddat. In *Danial Latifi* case[12] (2001), the Supreme Court upheld the constitutional validity of this Act but held that a Muslim husband is liable to pay the maintenance to the divorced wife even after the period of iddat.

D.C. WADHWA CASE (1986)

Name of the Case	:	D.C. Wadhwa vs. State of Bihar
Year of Judgement	:	1986
Popular Name	:	—
Related Topic/ Issue	:	Ordinance-making power of the Governor
Related Article/ Schedule	:	213

Supreme Court Judgement: It pointed out that between 1967-1981, the Governor of Bihar promulgated 256 ordinances and all these were kept in force for periods ranging from 1 to 14 years by re-promulgation from time to time. It held that the exceptional power under Article 213 cannot be used as a substitute for the law-making power of the State Legislature. It ruled that such a practice would be a 'subversion of the democratic process' and a 'fraud on the constitution'. It opined that the ordinance-making power is meant for meeting an extraordinary situation and it cannot be allowed to be 'perverted to serve political ends'. Accordingly, it declared the re-promulgated Bihar Intermediate Education Council Ordinance, 1985 as unconstitutional and invalid.

Impact of the Judgement: This judgement clearly exposed the fact that the ordinance-making power can be misused by the executive government.

M.C. MEHTA CASE (1986)

Name of the Case	:	M.C. Mehta vs. Union of India
Year of Judgement	:	1986
Popular Name	:	Oleum Gas Leak case
Related Topic/ Issue	:	Power of the Supreme Court to award compensation
Related Article/ Schedule	:	21 & 32

Supreme Court Judgement: It held that its power under Article 32 is not only injective in ambit, i.e., preventing the infringement of fundamental right but also remedial in scope and providing relief against a breach of the fundamental right already committed. It stated that its power to grant such remedial relief may include the power to award compensation in appropriate cases. It clarified that the infringement of the fundamental right must be gross and patent i.e., incontrovertible and ex facie glaring. It observed that the instant applications for compensation are for the enforcement of the fundamental right to life enshrined in Article 21 and hence, they are maintainable under Article 32.

Impact of the Judgement: This judgement led to the expansion of the ambit of Environmental Law in the country. It introduced the new principle of absolute liability (no-fault liability) in the place of the earlier principle of strict liability.

[12] *Danial Latifi* vs. *Union of India* (2001).

KIHOTO HOLLOHAN CASE (1992)

Name of the Case	:	Kihoto Hollohan vs. Zachillhu
Year of Judgement	:	1992
Popular Name	:	Defection case
Related Topic/ Issue	:	Validity of anti-defection law
Related Article/ Schedule	:	368 & Tenth Schedule

Supreme Court Judgement: It declared paragraph 7 of the Tenth Schedule (which was inserted by the 52nd Amendment Act, 1985) as unconstitutional for violating the provision under Article 368(2). It held that paragraph 7 required to be ratified by at least half of the State Legislatures for excluding the jurisdiction of the Supreme Court under Article 136 and the High Courts under Article 226. However, the court upheld the validity of the remaining part of the Tenth Schedule.

INDRA SAWHNEY CASE (1992)

Name of the Case	:	Indra Sawhney vs. Union of India
Year of Judgement	:	1992
Popular Name	:	Mandal case
Related Topic/ Issue	:	Reservation for OBCs in government jobs
Related Article/ Schedule	:	16

Supreme Court Judgement: It upheld the validity of the impugned executive order which provided 27% reservation of jobs to the OBCs under the provision of Article 16(4), with certain conditions like exclusion of creamy layer, no reservation in promotions, maximum reservation should not exceed 50%, ceiling of 50% on reservation in backlog vacancies, no relaxation in qualifying marks for promotions and so on. On the other hand, it invalidated another impugned executive order which provided 10% additional reservation of jobs for other economically backward sections who are not covered by any existing schemes of reservation.

Impact of the Judgement: This judgement led to the following: (i) Appointment of the Ram Nandan Committee to identify the creamy layer among the OBCs; (ii) Establishment of the statutory National Commission for BCs[13] to examine the complaints of under-inclusion, over-inclusion or non-inclusion of any class of citizens in the list of BCs; and (iii) Enactment of five amendment acts, namely, the 76th Amendment Act, 1994 that has placed the Tamil Nadu reservation act in the Ninth Schedule; the 77th Amendment Act, 1995 that has nullified the ruling with regard to reservation in promotions; the 81st Amendment Act, 2000 that has nullified the ruling with regard to backlog vacancies; the 82nd Amendment Act, 2000 that has provided for relaxations in qualifying marks and standards of evaluation in matters of reservation in promotions; and the 85th Amendment Act, 2001 that has provided for consequential seniority in matters of promotion by virtue of rule of reservation for the SCs and STs.

MOHINI JAIN CASE (1992)

Name of the Case	:	Mohini Jain vs. State of Karnataka
Year of Judgement	:	1992
Popular Name	:	Capitation Fee case
Related Topic/ Issue	:	Right to education
Related Article/ Schedule	:	21 & 41

Supreme Court Judgement: It ruled that the right to education is a fundamental right under Article 21. In fact, it declared that this right extends up to any level including the professional education like engineering and medicine. It observed that the right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. It argued that without making right to education under Article 41 a reality, the fundamental rights enshrined under Part III

[13]Later, the 102nd Amendment Act, 2018 conferred a constitutional status on the commission and also enlarged its functions. For this purpose, the amendment inserted a new Article 338-B in the constitution.

shall remain beyond the reach of the large majority which is illiterate. It thus declared that the right to education is concomitant to the fundamental rights. It further observed that the state is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. It declared that charging capitation fee for admission amounted to a patent denial of a citizen's right to education and is wholly arbitrary and as such violative of Article 14. It described the capitation fee as nothing but a price for selling education. It opined that the concept of "teaching shops" is contrary to the constitutional scheme.

Impact of the Judgement: This judgement formed the basis for the later judgement delivered by the Supreme Court in the *Unni Krishnan* case[14] (1993) that led to the passing of the 86th Amendment Act (2002). In this case, the Supreme Court was asked to examine the correctness of the *Mohini Jain's* judgement. The petitioners contended that if the *Mohini Jain's* judgement was followed by the state governments, they would have to close down their engineering and medical colleges. In this later judgement, the Supreme Court party upheld and partly overruled the *Mohini Jain's* judgement. This is explained below in the next case.

UNNI KRISHNAN CASE (1993)

Name of the Case	:	Unni Krishnan vs. State of A.P.
Year of Judgement	:	1993
Popular Name	:	—
Related Topic/Issue	:	Right to education
Related Article/ Schedule	:	21 & 45

Supreme Court Judgement: It held that the right to education is a fundamental right under Article 21 and that this right directly flows from the right to life. But, it declared that only children have right to free education until they complete the age of 14 years. After that age, the obligation of the state to provide education depends on its economic capacity and development. The court also said that the state is obliged to follow directions contained in Article 45 which originally (prior to its amendment in 2002) provided for free and compulsory education for all children upto the age of 14 years. The Article 21 is to be construed in the light of Articles 41, 45 and 46 contained in Part IV dealing with the Directive Principles of State Policy. The obligations created by Articles 41, 45 and 46 can be discharged by the state either by establishing its own institutions or by aiding, recognising or granting affiliation to private educational institutions. Further, the court held that the private unaided educational institutions running professional courses like engineering and medical are entitled to charge a higher fee than that of the government institutions. But such a fee cannot exceed the ceiling fixed in this regard and commercialisation of education is not permissible.

Impact of the Judgement: Subsequent to this judgement, the 86th Amendment Act (2002) was passed. This amendment added a new Article 21A which makes the right to education an independent fundamental right. This Article declares that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may determine. To give effect to this Article, the Parliament enacted the Right of children to Free and Compulsory Education (RTE) Act, 2009.

SUPREME COURT ADVOCATES-ON-RECORD ASSOCIATION CASE (1993)

Name of the Case	:	Supreme Court Advocates-on-Record Association vs. Union of India
Year of Judgement	:	1993
Popular Name	:	Second Judges case
Related Topic/ Issue	:	Appointment of Supreme Court and High Court Judges
Related Article/ Schedule	:	124 & 217

[14] *Unni Krishnan* vs. *State of A.P.* (1993).

Supreme Court Judgement: It overruled its earlier judgement delivered in the *S.P. Gupta* case[15] (1981) which is popularly known as the First Judges case. It held that the judges of the Supreme Court and High Courts shall be appointed by the President in accordance with the advice tendered by the Chief Justice of India. But the Chief Justice of India shall tender such advice after taking into consideration the views of two of his senior most colleagues. This means that the court has changed the meaning of the word 'consultation' in Articles 124 (2) and 217(1) to that of 'concurrence'. Further, it held that the senior-most judge of the Supreme Court should be appointed as the Chief Justice of India.

Impact of the Judgement: Consequent to this judgement and also the Advisory Opinion tendered in the *Third Judges* case[16] (1998), a Memorandum of Procedure for appointment of judges to the Supreme Court and the High Courts was formulated, and is being followed for appointment. This procedure, invented by the judiciary, is known as the "collegium system".

S.R. BOMMAI CASE (1994)

Name of the Case	: S.R. Bommai vs. Union of India
Year of Judgement	: 1994
Popular Name	: –
Related Topic/Issue	: President's rule
Related Article/Schedule	: 356

Supreme Court Judgement: It upheld the constitutional validity of the imposition of President's rule under Article 356 in Madhya Pradesh, Himachal Pradesh and Rajasthan in 1992. On the other hand, it declared the imposition of President's Rule in Nagaland in 1988, Karnataka in 1989 and Meghalaya in 1991 as unconstitutional and invalid. Further, it laid down the following propositions with respect to Article 356: (a) The validity of the proclamation issued by the President under Article 356(1) is subject to judicial review; (b) Burden lies on the Union Government to prove that the relevant material existed to justify the proclamation; (c) Article 74(2) is not a bar against the scrutiny of the material on the basis of which the President had arrived at his satisfaction; (d) If the proclamation issued by the President is held invalid, then notwithstanding the fact that it is approved by both the Houses of Parliament, it will be open for the court to restore the Legislative Assembly and the Ministry; and (e) Secularism is a part of the basic structure of the constitution and hence, the anti-secular acts of a State Government can lawfully be deemed to be a ground for the imposition of the President's Rule.

Impact of the Judgement: This judgement placed a check on the arbitrary exercise of power under Article 356 by the Centre for the purpose of imposing President's Rule in the States.

VISHAKA CASE (1997)

Name of the Case	: Vishaka vs. State of Rajasthan
Year of Judgement	: 1997
Popular Name	: –
Related Topic/ Issue	: Sexual harassment of women at workplace
Related Article/ Schedule	: 15 & 21

Supreme Court Judgement: It held that the sexual harassment of women at the workplace is a violation of Articles 15 and 21. It said that it is the duty of the employer or other responsible person in work-places or other institutions, whether public or private, to prevent sexual harassment of working women. It gave detailed directions on the subject, whose guidelines are to be strictly observed by all employees, public or private, until suitable legislation is enacted on the subject.

[15] *S.P. Gupta* vs. *Union of India* (1981).

[16] In *Re-Presidential Reference* (1998). The President sought the Supreme Court's opinion (under Article 143) on certain doubts over the consultation process to be adopted by the Chief Justice of India as stipulated in the *Second Judges* case (1993).

Impact of the Judgement: By laying down a set of guidelines (which came to be known as the 'Vishaka Guidelines'), this judgement filled the legislative vacuum on the subject. Till this time, there was no domestic law to address this issue except a few provisions of the Indian Penal Code. Later, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment.

VINEET NARAIN CASE (1997)

Name of the Case	:	Vineet Narain vs. Union of India
Year of Judgement	:	1997
Popular Name	:	Jain Hawala case
Related Topic/ Issue	:	Autonomy and efficient functioning of CBI
Related Article/ Schedule	:	–

Supreme Court Judgement: It directed that statutory status should be conferred upon the Central Vigilance Commission (CVC). It also issued directions to make the Central Bureau of Investigation (CBI) an autonomous body so that it can function effectively and efficiently and is viewed as a non-partisan agency. It issued the similar directions with respect to the Enforcement Directorate (ED). Further, it also struck down the validity of the arbitrary provision of Single Directive that required the CBI to obtain the prior permission of the Central Government before conducting an investigation against the officers of the rank of Joint Secretary and above.

Impact of the Judgement: This judgement led to the enactment of the CVC Act, 2003 that conferred the Statutory Status upon the CVC. Under this Act, the superintendence of the CBI in so far as it relates to the investigation of corruption cases has been vested in the CVC. Further, this Act also reinstated the provision of Single Directive that was again declared invalid by the Supreme Court in 2014 on the ground that it is violative of Article 14.

ASSOCIATION FOR DEMOCRATIC REFORMS CASE (2002)

Name of the Case	:	Union of India vs. Association for Democratic Reforms
Year of Judgement	:	2002
Popular Name	:	Poll Reforms case
Related Topic/Issue	:	Criminalization of politics
Related Article/ Schedule	:	19

Supreme Court Judgement: It held that a voter has a right to know about the antecedents including criminal past of his candidate as part of his right under Article 19(1)(a) i.e., freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Democracy cannot survive without free and fair elections, without free and fairly informed voters. Therefore, the court directed the Election Commission to make it mandatory for the candidates to furnish information on the following aspects: (a) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past – if any, whether he is punished with imprisonment or fine; (b) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof; (c) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependents; (d) Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues; and (e) The educational qualifications of the candidate.

Impact of the Judgement: As a sequel to this judgement, the Election Commission issued in 2003 an order[17] directing every candidate

[17]Order dated March 27, 2003.

seeking election to the Parliament or a State Legislature to furnish on his nomination paper the information on the above (a) to (e) matters. Furnishing of any false information in the affidavit is now an electoral offence.

T.M.A. PAI FOUNDATION CASE (2002)

Name of the Case	: T.M.A. Pai Foundation vs. State of Karnataka
Year of Judgement	: 2002
Popular Name	: —
Related Topic/Issue	: Rights of minority educational institutions
Related Article/ Schedule	: 29 & 30

Supreme Court Judgement: It laid down the following propositions with respect to the rights of and the permissible restrictions upon minority educational institutions (both aided and unaided): (a) Linguistic and religious minorities are covered by the expression "minority" under Article 30. Since reorganization of the states in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put at par in Article 30, have to be considered state-wise; (b) Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words "of their choice" indicates that even professional educational institutions would be covered by Article 30; (c) Admission of students to unaided minority educational institutions, cannot be regulated by the State government or the university (except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards); (d) The right to administer, not being an absolute one, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof; (e) The moment aid is received by a minority educational institution, it would be governed by Article 29(2) and would then not be able to refuse admission on grounds of religion, race, caste, language or any of them. In other words, it cannot then give preference to students of its own community; (f) In the case of aided professional institutions, it can also be stipulated that passing of common entrance test held by the state agency is necessary to seek admission; and (g) A minority institution may have its own procedure and method of admission as well as selection of students, but such procedure must be fair and transparent and selection of students in professional and higher educational colleges should be on the basis of merit.

Impact of the Judgement: In order to overcome the effect of this judgement and also the judgement delivered in the *Inamdar* case[18] (2005), the 93rd Amendment Act (2005) was enacted. This amendment inserted a new Clause (5) in Article 15. This clause empowered the state to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institutions. This provision also includes private educational institutions, whether aided or unaided by the state, except the minority educational institutions under Article 30(1).

NAVEEN JINDAL CASE (2004)

Name of the Case	: Union of India vs. Naveen Jindal
Year of Judgement	: 2004
Popular Name	: —
Related Topic/ Issue	: Right to fly the national flag
Related Article/ Schedule	: 19

Supreme Court Judgement: It held that the right to fly the national flag freely with respect and dignity is a fundamental right of a citizen within the meaning of the freedom of speech and expression guaranteed by Article 19(1)(a). This right is an expression

[18] *P.A. Inamdar* vs. *State of Maharashtra* (2005).

and manifestation of a citizen's allegiance and feelings and sentiments of pride for the nation. However, it cannot be used for commercial purpose or otherwise.

PRAKASH SINGH CASE (2006)

Name of the Case	:	Prakash Singh vs. Union of India
Year of Judgement	:	2006
Popular Name	:	–
Related Topic/Issue	:	Police reforms
Related Article/ Schedule	:	–

Supreme Court Judgement: It issued seven directives to the central government, state governments and union territories aimed at bringing in police reforms to ensure that the police machinery functions without any political interference. These are: (i) constitution of a State Security Commission; (ii) Selection of the DGP from amongst the three senior-most officers empanelled by the UPSC for the post and a minimum tenure of two years for the DGP, (iii) a minimum tenure of two years also for the police officers on operational duties, (iv) separation of the investigation police from the law and order police, (v) setting up a Police Establishment Board, (vi) setting up Police Complaints Authority at state and district levels, and (vii) setting up a National Security commission at the central level.

Impact of the Judgement: This judgement led to the introduction of police reforms in the country but only partially and not fully. Also, it could not eliminate the political interference in the functioning of the police system, especially in the postings and transfers. Although State Security Commissions and Police Establishment Boards have been set-up in most of the states, they are not very effective in their functioning and lack the authority to make binding recommendations. However, in various cases, the High Courts have issued orders asking the statement governments to comply with the above directives of the Supreme Court.

M. NAGARAJ CASE (2006)

Name of the Case	:	M. Nagaraj vs. Union of India
Year of Judgement	:	2006
Popular Name	:	–
Related Topic/ Issue	:	Reservation in promotions for SCs and STs
Related Article/ Schedule	:	16 & 335

Supreme Court Judgement: It upheld the constitutional validity of the 77th Amendment Act (1995) the 81st Amendment Act (2000), the 82nd Amendment Act (2000) and the 85th Amendment Act (2001). It said that the impugned Constitutional Amendment Acts by which Article 16(4A) and Article 16(4B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enable the State to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to Scheduled Castes and Scheduled Tribes. They do not obliterate any of the constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between the OBCs on the one hand and the SCs and the STs on the other hand as held in the *Indra Sawhney* case[19] (1992) and the concept of post-based roster with inbuilt concept of replacement as held in the *R.K. Sabharwal* case[20] (1995).

I.R. COELHO CASE (2007)

Name of the Case	:	I.R. Coelho vs. State of Tamil Nadu
Year of Judgement	:	2007
Popular Name	:	Ninth Schedule case

[19] *Indra Sawhney* vs. *Union of India* (1992). This case is popularly known as the Mandal case.

[20] *R.K. Sabharwal* vs. *State of Punjab* (1995).

Related Topic/ Issue	: Judicial review of the ninth schedule
Related Article/ Schedule	: 31B & Ninth Schedule

Supreme Court Judgement: It reaffirmed its judgement delivered in the *Waman Rao* case[21] (1980). Therefore, it held that the amendments to the Constitution made on or after 24 April 1973 (i.e., the date of verdict in the *Kesavananda Bharati* case[22]) by which the Ninth Schedule is amended by inclusion of various laws therein would be open to challenge on the ground that they damage or destroy the basic structure of the Constitution. In addition, it laid down certain tests which are to be applied for deciding the validity of those constitutional amendments. The fundamental question before the court was whether on or after 24 April 1973, when basic structure doctrine was propounded, it is permissible for the Parliament under Article 31B to immunize legislations from fundamental rights by inserting them into the Ninth Schedule and, if so, what is its effect on the power of judicial review of the court.

ARUNA RAMACHANDRA SHANBAUG CASE (2011)

Name of the Case	: Aruna Ramachandra Shanbaug vs. Union of India
Year of Judgement	: 2011
Popular Name	: —
Related Topic/Issue	: Euthanasia
Related Article/ Schedule	: 21

Supreme Court Judgement: It held that active euthanasia and assisted death are not permissible and hence, continue to be illegal, whereas passive euthanasia is permissible with certain conditions, safeguards and procedure laid down by the court: (i) A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person acting as a next friend or by the doctors attending the patient; (ii) Even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned; (iii) When such an application is filed, the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of three reputed doctors to be nominated by the Bench; and (iv) The High Court Bench shall also issue notice to the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient, and in their absence his/her next friend, and supply a copy of the report of the doctor's committee to them. After hearing them, the High Court bench should give its verdict.

PEOPLE'S UNION FOR CIVIL LIBERTIES CASE (2013)

Name of the Case	: People's Union for Civil Liberties vs. Union of India
Year of Judgement	: 2013
Popular Name	: NOTA case
Related Topic/Issue	: Electoral reforms
Related Article/ Schedule	: 14, 19 & 21

Supreme Court Judgement: It held that Rules 41(2) & (3) and 49-O of the Conduct of Election Rules, 1961 (which recognize the right of a voter not to vote) are ultra-vires Section 128 of the Representation of the People Act, 1951 and Article 19(1)(a) of the Constitution to the extent they violate secrecy of voting. Therefore, it directed the Election Commission to provide necessary provision in the ballot papers/EVMs and another button called "None of the Above" (NOTA) may be provided in EVMs so that the voters, who

[21] *Waman Rao* vs. *Union of India* (1980).

[22] *Kesavananda Bharati* vs. *State of Kerala* (1973). This case is popularly known as the Fundamental Rights case.

come to the polling booth and decide not to vote for any of the candidates in the fray, are able to exercise their right not to vote while maintaining their right of secrecy. The court made the following observations: (i) In order to protect the right in terms of Section 79(d) and Rule 49-O, viz., "right not to vote", this court is competent to issue directions that secrecy of a voter who decides not to cast his vote has to be protected in the same manner as the Statute has protected the right of a voter who decides to cast his vote in favour of a candidate; (ii) This court is also justified in giving such directions in order to give effect to the right of expression under Article 19(1)(a) and to avoid any discrimination by directing the Election Commission to provide NOTA button in the EVMs; (iii) Article 19 guarantees all individuals the right to speak, criticize, and disagree on a particular issue. It stands on the spirit of tolerance and allows people to have diverse views, ideas and ideologies. Not allowing a person to cast vote negatively defeats the very freedom of expression and the right ensured in Article 21 i.e., the right to liberty; and (iv) Protection of elector's identity and affording secrecy is integral to free and fair elections and an arbitrary distinction between the voter who casts his vote and the voter who does not cast his vote is violative of Article 14.

Impact of the Judgement: Subsequent to this judgement, the Election Commission made provision in the ballot papers/EVMs for None of the Above (NOTA) option. The provision for NOTA has been made since General Election to State Legislative Assemblies of Chhattisgarh, MP, Mizoram, NCT of Delhi and Rajasthan in 2013 and continued in the General Election to State Legislative Assemblies of Andhra Pradesh, Arunachal Pradesh, Odisha and Sikkim in 2014 along with the General Elections to the Sixteenth Lok Sabha (2014)[23].

[23]Electoral Statistics: Pocket Book 2015, Election Commission of India, p. 96.

LILY THOMAS CASE (2013)

Name of the Case	: Lily Thomas vs. Union of India
Year of Judgement	: 2013
Popular Name	: —
Related Topic/Issue	: Criminalization of politics
Related Article/Schedule	: 102 & 191

Supreme Court Judgement: It held that the members of the Parliament and the State Legislatures, who have been convicted for offences, will loose their membership of the House immediately (i.e., the disqualification takes place from the date of conviction). It struck down Section 8(4) of the Representation of the People Act, 1951 and declared the same as unconstitutional. Under this Section, the convicted members of the Parliament and the State Legislatures are given three months time to appeal in the higher court and get a stay on their conviction and sentence by the trial court. The court ruled that the Parliament does not have the power under Articles 102 and 191 to make different laws for a person to be disqualified for being chosen as a member and for a person to be disqualified for continuing as a member of the Parliament or the State Legislature. Hence, the above Section 8(4), which carved out a saving in the case of a sitting member from disqualification, is beyond the powers conferred on the Parliament and is ultra vires the constitution.

Impact of the Judgement: This judgement led to the immediate disqualification of a number of convicted members of the Parliament and the State Legislatures. In order to nullify this ruling of the Supreme Court, the Representation of the People (Second Amendment and Validation) Bill, 2013 was introduced in the Parliament. However, this Bill was later withdrawn by the Government.

T.S.R. SUBRAMANIAN CASE (2013)

Name of the Case	: T.S.R. Subramanian vs. Union of India
Year of Judgement	: 2013
Popular Name	: —

Related Topic/ Issue : Civil service reforms
Related Article/ Schedule : —

Supreme Court Judgement: It issued various directions to the central government, state governments and union territories aimed at bringing in civil service reforms for the effective, efficient and transparent administration as well as the accountability and stability of civil servants. These are (i) constitution of the Civil Service Boards to guide and advice the governments on transfers, postings, disciplinary action and other service matters, (ii) providing a fixed minimum tenure of service to various civil servants, and (iii) mandating that the civil servants should not act on the basis of verbal or oral instructions, orders, suggestions, proposals and directions and these should be in writing and also formally recorded if given orally.

Impact of the Judgement: This judgement led to the making of amendments in Rule 7 of the IAS, IPS and IFoS (Cadre) Rules vide a notification issued in 2014. For the Central Services, the respective Cadre Controlling Authorities have been directed to implement the above directions of the Supreme Court. However, the Civil Service Boards in the States/UTs are not functioning effectively.

NATIONAL LEGAL SERVICES AUTHORITY CASE (2014)

Name of the Case : National Legal Services Authority vs. Union of India
Year of Judgement : 2014
Popular Name : —
Related Topic/ Issue : Rights of transgender persons
Related Article/ Schedule : 14 & 21

Supreme Court Judgement: It declared Transgenders along with Hijaras/Eunuchs as 'third gender' and held that the fundamental rights granted under Part III of the constitution are equally applicable to them. It also upheld Transgender persons' right to decide their self-identified gender and directed the Central and State Governments to grant legal recognition of their gender identity such as male, female or as third gender.

It also directed the Central and State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments. The court held that non-recognition of Transgender denies them equal protection of law under Article 14. If further held that Article 21 protects one's right of self-determination of the gender to which a person belongs. In other words, gender identify is integral to the dignity of an individual and is at the core of 'personal autonomy' and 'self-determination'.

Impact of the Judgement: This judgement led to the enactment of the Transgender Persons (Protection of Rights) Act, 2019. The objective of this act is to provide for protection of rights of transgender persons and their welfare. This act prohibits discrimination against transgender persons and confers right upon them to be recognized as such, and a right to self-perceived gender identity.

SHREYA SINGHAL CASE (2015)

Name of the Case : Shreya Singhal vs. Union of India
Year of Judgement : 2015
Popular Name : —
Related Topic/ Issue : Restrictions on online speech
Related Article/ Schedule : 19

Supreme Court Judgement: It struck down section 66A of the Information Technology Act (2000), which provides punishment for sending offensive messages by any person through a computer resource or a communication device. It held that the section in its entirety is violative of the freedom of speech

and expression guaranteed under Article 19(1)(a). It further held that the section is not saved by Article 19(2) as it creates an offence which is vague and over-broad. It also held that the wider range of circulation over the internet cannot restrict the content of the right under Article 19(1)(a) nor can it justify the denial of that right.

SUPREME COURT ADVOCATES-ON-RECORD ASSOCIATION CASE (2015)

Name of the Case	:	Supreme Court Advocates-on-Record Association vs. Union of India
Year of Judgement	:	2015
Popular Name	:	Fourth Judges case or NJAC case
Related Topic/ Issue	:	Appointment of Supreme Court and High Court Judges
Related Article/ Schedule	:	124 & 217

Supreme Court Judgement: It declared the 99th Amendment Act (2014) as unconstitutional and void on the ground that it affects the independence of judiciary which is one of the components of the basic structure of the constitution. It also declared the National Judicial Appointments Commission Act (2014) as unconstitutional and void. Further, it declared the earlier 'collegium system' of appointment of judges to the Supreme Court and the High Courts to be operative. It ordered to list the case to consider introduction of appropriate measures, if any, for an improved working of the 'collegium system'.

Impact of the Judgement: Consequent to this judgement, both the 99th Amendment Act (2014) as well as the National Judicial Appointments Commission Act (2014) became invalid. Therefore, the earlier collegium system of appointment of judges to the Supreme Court and the High Courts was restored.

SHAYARA BANO CASE (2017)

Name of the Case	:	Shayara Bano vs. Union of India
Year of Judgement	:	2017
Popular Name	:	Triple Talaq case
Related Topic/ Issue	:	Divorce in the muslim community
Related Article/ Schedule	:	14

Supreme Court Judgement: It declared triple talaq i.e., 'talaq-e-biddat' (the Muslim practice that allows men to instantly divorce their wives) as unconstitutional. It held that this form of talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a muslim man without any attempt at reconciliation so as to save it. Therefore, the court held this form of talaq to be violative of the fundamental right contained under Article 14 of the Constitution. Similarly, it declared Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, as void to the extent that it recognizes and enforces triple talaq. Further, it ruled that triple talaq is against the basic tenets of the Holy Quran and what is held to be bad in the Holy Quran, cannot be good in Shariat and, in that sense, what is bad in theology is bad in law as well. Moreover, the court directed the central government to make a law within six months to govern divorce in the muslim community. Till then, an injunction order of the court against the pronouncement of triple talaq would be in force.

Impact of the Judgement: This judgement led to the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019. This act is popularly known as the Triple Talaq Act. It protects the rights of married Muslim women and prohibits divorce by pronouncing talaq by their husbands.

K.S. PUTTASWAMY CASE (2017)

Name of the Case	:	K.S. Puttaswamy vs. Union of India
Year of Judgement	:	2017
Popular Name	:	Right to privacy case

Related Topic/ Issue	:	Fundamental right to privacy
Related Article/ Schedule	:	21

Supreme Court Judgement: It declared right to privacy as a fundamental right. It ruled that right to privacy is protected as an intrinsic part of right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. It said that privacy safeguards individual autonomy and recognizes the ability of the individual to control vital aspects of his life. However, it also stated that the right to privacy is not an absolute right and hence, is subject to reasonable restrictions which are placed on fundamental freedoms under Part III of the Constitution. This means that a law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental freedoms. In the context of Article 21, an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the three-fold requirement of: (i) legality, which stipulates the existence of law; (ii) need, defined in terms of a legitimate state aim; and (iii) proportionality, which ensures a rational nexus between the objects and the means adopted to achieve them.

Impact of the Judgement: This judgement over-ruled the two earlier judgements delivered in *M.P. Sharma* case[24] (1954) and *Kharak Singh* case[25] (1962). In both the cases, the Supreme Court had held that the right to privacy is not protected by the Constitution. This judgement also clarified that the various judgements subsequent to Kharak Singh, which have recognized the fundamental right to privacy, lay down the correct position of law. Further, this judgement influenced the later judgements delivered by the Supreme Court in *Indian Young Lawyers Association* case[26](2018), *Joseph Shine* case[27] (2018), *Navtej Singh Johar* case[28] (2018) and other cases.

Based on this judgement, the Supreme Court delivered (in 2018) a separate judgement on the validity of Aadhaar law. This judgement is popularly known as the Aadhaar judgement or Puttaswamy-II judgement. In this judgement, the Supreme Court upheld the constitutional validity of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016. It ruled that the requirement under the Aadhaar Act to give one's demographic and biometric information does not violate the fundamental right of privacy. It said that the Aadhaar Act does not create an architecture for pervasive surveillance and provides protection and safety of the data received from individuals. However, the court struck down certain provisions of the Act and suggested changes. Accordingly, the Aadhaar and Other Laws (Amendment) Act, 2019 was enacted.

INDIAN YOUNG LAWYERS ASSOCIATION CASE (2018)

Name of the Case	:	Indian Young Lawyers Association vs. State of kerala
Year of Judgement	:	2018
Popular Name	:	Sabarimala case
Related Topic/ Issue	:	Women's entry into Sabarimala temple
Related Article/ Schedule	:	14, 21 & 25

Supreme Court Judgement: It held that the women of all ages can enter into the Sabarimal temple and worship Lord Ayyappa. It declared that the ban on the entry of women of the age group of 10-50 years into the temple, is unconstitutional. It held that the ban violates the right to equality under Article 14, the

[24] *M.P. Sharma* vs. *Satish Chandra* (1954).
[25] *Kharak Singh* vs. *State of U.P.* (1962).
[26] *Indian Young Lawyers Association* vs. *State of Kerala* (2018). This case is popularly known as the Sabarimala case.
[27] *Joseph Shine* vs. *Union of India* (2018).
[28] *Navtej Singh Johar* vs. *Union of India* (2018).

right to personal liberty under Article 21 and the right to freedom of religion under Article 25. Accordingly, it struck down Rule 3(b) of the Kerala Hindu places of Public Worship (Authorisation of Entry) Rules, 1965 which prohibits the entry of women into the temple.

Impact of the Judgement: This judgement led to the protests and hartals by lakhs of devotees of Lord Ayyappa in Kerala. On the other hand, some women made attempts to enter the temple. But they faced strong resistance from the devotees as well as temple priests and authorities. However, there were some successful attempts also. In November, 2019, the five-judge Sabarimala Review Bench has referred this case to a larger bench for adjudication. Subsequently, a nine-judge Bench was constituted to conduct the hearing on this reference.

JOSEPH SHINE CASE (2018)

Name of the Case	:	Joseph Shine vs. Union of India
Year of Judgement	:	2018
Popular Name	:	—
Related Topic/ Issue	:	Decriminalisation of adultery
Related Article/ Schedule	:	14, 15 & 21

Supreme Court Judgement: It decriminalised adultery and struck down section 497 of the Indian Penal Code. It declared that this section dealing with the criminalization of adultery, is unconstitutional. It held that this section violates Articles 14, 15 and 21. Further, the court declared that the Section 198(2) of the Code of Criminal Procedure, is also unconstitutional to the extent that it is applicable to the offence of adultery. It observed that when the substantive provision goes, the procedural provision has to pave the same path.

Impact of the Judgement: This judgement has overruled all the previous judgements which had upheld the above Section 497 as constitutionally valid. After this judgement, adultery is no longer a criminal offence attracting up to 5 years' imprisonment. However, it can be considered as a civil wrong and it is a ground for the dissolution of marriage.

NAVTEJ SINGH JOHAR CASE (2018)

Name of the Case	:	Navtej Singh Johar vs. Union of India
Year of Judgement	:	2018
Popular Name	:	—
Related Topic/Issue	:	Decriminalisation of homosexuality
Related Article/ Schedule	:	14, 15, 19 & 21

Supreme Court Judgement: It decriminalized homosexuality and partly struck down Section 377 of the Indian Penal Code which criminalized carnal intercourse against the order of nature. It held that this Section is unconstitutional in so far as it criminalizes consensual sexual acts of adults of the same sex. It declared that this Section violates the right to equality under Article 14, the right to non-discrimination under Article 15, the right to freedom of expression under Article 19(1)(a) and the right to live a life of dignity and privacy under Article 21. It said that the LGBT (lesbian, gay, bisexual and transgender) persons are entitled to the same fundamental rights as others.

Impact of the Judgement: This judgement overruled the earlier judgement delivered in the *Suresh Kumar Koushal* case[29] (2013). In this case, the Supreme Court had upheld the constitutional validity of the above Section 377. Before this judgement, the members of the LGBT community were compelled to live a life full of fear of reprisal and persecution. Now, they are legally permitted to engage in consensual sexual conduct. Notably, the provisions of the above Section 377 will continue to govern non-consensual sexual acts against adults, all acts of carnal intercourse against minors and acts of bestiality.

[29] *Suresh Kumar Koushal* vs. *Naz Foundation* (2013).

M. SIDDIQ CASE (2019)

Name of the Case	:	M. Siddiq vs. Mahant Suresh Das
Year of Judgement	:	2019
Popular Name	:	Ayodhya case
Related Topic/ Issue	:	Ram Janmabhoomi-Babri Masjid land dispute
Related Article/ Schedule	:	—

Supreme Court Judgement: It awarded the entire 2.77 acres of the disputed land in Ayodhya to the deity Ram Lalla virajman. It gave the following directions: (i) It directed the Centre to formulate a scheme for the setting-up of a trust for the construction of a Ram Mandir at the disputed site where the centuries-old Babri Masjid stood before its demolition in 1992; (ii) It directed the Centre and UP government to allot an alternative 5 acres of land to the UP Sunni Central Waqf Board at a suitable prominent place in Ayodhya for the construction of a mosque; (iii) It directed that in framing the scheme for the setting-up of the trust, an appropriate representation may be given to the Nirmoni Akhara in such manner as the Centre deems fit. The suit filed by the Akhara claiming shebaiti rights has been held to be barred by limitation and shall accordingly stand dismissed.

Impact of the Judgement: This judgement has put an end to the more than a century-old dispute that has shook the communal harmony dimension of the Indian society. Subsequent to this judgement, the Centre announced the formation of the Ayodhya temple trust called as the Shri Ram Janmabhoomi Teerth Kshetra. Similarly, the UP government announced the allocation of 5 acres of land to the UP Sunni Central Waqf Board in Dhannipur, Ayodhya. Further, this judgement has overturned the 2010 Allahabad High Court judgement. The High Court had equally divided the disputed land between the three parties, viz., one-third for Ram Lalla Virajman, one-third for UP Sunni Central Waqf Board and one-third for Nirmohi Akhara.

ANURADHA BHASIN CASE (2020)

Name of the Case	:	Anuradha Bhasin vs. Union of India
Year of Judgement	:	2020
Popular Name	:	—
Related Topic/ Issue	:	Suspension of internet services
Related Article/ Schedule	:	19

Supreme Court Judgement: It held the following: (i) The freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). The restriction upon such fundamental rights should be in consonance with the mandate under Article 19(2) and (6), inclusive of the test of proportionality; (ii) An order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. Suspension can be utilized for temporary duration only; (iii) Any order suspending internet issued under the Suspension Rules, must adhere to the principle of proportionality and must not extend beyond necessary duration.

Impact of the Judgement: This judgement led to the emergence of the right to access to the internet (or right to access to information via the internet) as a fundamental right under the constitution. On the other hand, this judgement also recognized the right of the government to shutdown the internet by adhering to the principle of proportionality. These two situations may create conflicts in the provision of internet services in the country.

RAMBABU SINGH THAKUR CASE (2020)

Name of the Case	:	Rambabu Singh Thakur vs. Sunil Arora
Year of Judgement	:	2020
Popular Name	:	—

Related Topic/ Issue : Criminalisation of politics
Related Article/ Schedule : —

Supreme Court Judgement: It issued various directions aimed at curbing the growing incidence of criminals in politics. These are: (i) It shall be mandatory for political parties (at the central and state election level) to upload on their website detailed information regarding individuals (with pending criminal cases) who have been selected as candidates. This should include the nature of the offences and relevant particulars such as whether charges have been framed, the concerned court, the case number etc. The parties should also state the reasons for such selection as well as the reasons for such selection as well as the reasons as to why other individuals without criminal antecedents could not be selected as candidates; (ii) The reasons as to selection shall be with reference to the qualifications, achievements and merit of the candidate concerned and not mere winnability at the polls; (iii) This information shall also be published in one local vernacular newspaper and one national newspaper, and on the official social media platforms of the political party, including Facebook and Twitter.

Impact of the Judgement: Subsequent to this judgement, the Election Commission sent a communication to all the recognized political parties requiring them to follow the above directions. Further, it also released a new Form C-7 where in the political parties have to provide all the information regarding selected candidates having criminal background.

INTERNET AND MOBILE ASSOCIATION OF INDIA CASE (2020)

Name of the Case : Internet and Mobile Association of India vs. Reserve Bank of India
Year of Judgement : 2020
Popular Name : —
Related Topic/ Issue : Ban on crypto currency trading
Related Article/ Schedule : 19

Supreme Court Judgement: It struck down a circular issued by the Reserve Bank of India (RBI) that had directed the banks and financial institutions not to deal in virtual currencies (VCs) nor provide services in relation to VCs. It declared the circular as illegal and unenforceable on the ground of proportionality. It said that the RBI itself had not found that the banks and financial institutions have suffered any loss or adversely effected on account of VC exchanges. Further, it also ruled that the circular violates the freedom to carry on trade under Article 19(1)(g). Hence, it declared the circular as unconstitutional.

Impact of the Judgement: This judgement removed the ban on crypto currency trading in India. This made the banks and financial institutions to rejoin the virtual currency industry and do the trading. Further, this judgement also brought into focus the need for creating a legal framework for regulating the crypto currency trading and the various issues associated with this industry in India.

Table 90.1 Cases Declaring Amendments as Unconstitutional

Sl. No.	Case (Year)	Amendment Challenged in the Supreme Court	Provision Declared as Unconstitutional by the Supreme Court
1.	I.C. Golak Nath vs. State of Punjab (1967)	17th Amendment Act, 1964	17th Amendment (in part)
2.	Kesavananda Bharati vs. State of Kerala (1973) (popularly known as the Fundamental Rights case)	25th Amendment Act, 1971	Article 31C (in part)
3.	Indira Nehru Ghandhi vs. Raj Narain (1975) (popularly known as the Election case)	39th Amendment Act, 1975	Article 329A (clause 4)
4.	Minerva Mills vs. Union of India (1980)	42nd Amendment Act, 1976	Article 368 (clauses 4 & 5) and Article 31C (in part)
5.	P. Sambamurthy vs. State of Andhra Pradesh (1986)	32nd Amendment Act, 1973	Article 371D (clause 5 and its proviso)
6.	Kihoto Hollohan vs. Zachillhu (1992) (popularly known as the Defection case)	52nd Amendment Act, 1985	Tenth Schedule (Paragraph 7)
7.	L. Chandra Kumar vs. Union of India (1997)	42nd Amendment Act, 1976	Article 323A (sub-clause (d) of clause 2) and Article 323B (sub- clause (d) of clause 3)
8.	Supreme Court Advocates-on-Record Association vs. Union of India (2015) (popularly known as the Fourth Judges case)	99th Amendment Act, 2014	99th Amendment (total)
9.	Union of India vs. Rajendra N Shah (2021)	97th Amendment Act, 2011	97th Amendment (in part)

Table 90.2 Cases Leading to Constitutional Amendments

Sl. No.	Case (Year)	Led to the Enactment of the Amendment Act (partly or fully)
1.	Romesh Thappar vs. State of Madras (1950) (popularly known as the Cross Roads case)	1st Amendment Act, 1951
2.	Brij Bhushan vs. State of Delhi (1950)	1st Amendment Act, 1951
3.	State of Madras vs. Champakam Dorairajan (1951)	1st Amendment Act, 1951
4.	State of West Bengal vs. Bella Banerjee (1953)	4th Amendment Act, 1955
5.	Election Commission vs. Venkata Rao (1953)	15th Amendment Act, 1962
6.	State of Bombay vs. United Motors India (P) Limited (1953)	6th Amendment Act, 1956
7.	Saghir Ahmed vs. State of Uttar Pradesh (1954)	4th Amendment Act, 1955
8.	Bengal Immunity Company Ltd., vs. State of Bihar (1955)	6th Amendment Act, 1956
9.	N.B. Khare vs. Election Commission (1957)	11th Amendment Act, 1961

(Contd.)

Sl. No.	Case (Year)	Led to the Enactment of the Amendment Act (partly or fully)
10.	State of Madras vs. M/s. Gannon Dunkerley & Co., Madras (1958)	46th Amendment Act, 1982
11.	Berubari Union, In Re. (1960)	9th Amendment Act, 1960
12.	New India Sugar Mills vs. Commissioner of Sales Tax, Bihar (1962)	46th Amendment Act, 1982
13.	Chandra Mohan vs. State of U.P. (1966)	20th Amendment Act, 1962
14.	I.C. Golak Nath vs. State of Punjab (1967)	24th Amendment Act, 1971
15.	R.C. Cooper vs. Union of India (1970) (popularly known as the Bank Nationalisation case)	25th Amendment Act, 1971
16.	Madhav Rao Scindia vs. Union of India (1970) (popularly known as the Privy Purse case)	26th Amendment act, 1971
17.	State of Himachal Pradesh vs. Associated Hotels of India Ltd. (1972)	46th Amendment Act, 1982
18.	Oil and Natural Gas Commission vs. State of Bihar (1976)	46th Amendment Act, 1982
19.	Misrilal Jain vs. State of Orissa (1977)	43rd Amendment Act, 1977
20.	Vishu Agencies vs. Commercial Tax Officer (1977)	46th Amendment Act, 1982
21.	Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi (1978)	46th Amendment Act, 1982
22.	Prabhakaran Nair vs. State of Tamil Nadu (1987)	75th Amendment Act, 1993
23.	Indra Sawhney vs. Union of India (1992) (popularly known as the Mandal case)	76th Amendment Act, 1994; 77th Amendment Act, 1995; 81st Amendment Act, 2000; 82nd Amendment Act, 2000; and 85th Amendment Act, 2001
24.	Unni Krishnan vs. State of A.P. (1993)	86th Amendment Act, 2002
25.	Union of India vs. Virpal Singh Chauhan (1995)	85th Amendment Act, 2001
26.	S. Vinod Kumar vs. Union of India (1996)	82nd Amendment Act, 2000
27.	Ajit Singh Januja vs. State of Punjab (1996)	85th Amendment Act, 2001
28.	T.M.A. Pai Foundation vs. State of Karnataka (2002)	93rd Amendment Act, 2005
29.	P.A. Inamdar vs. State of Maharashtra (2005)	93rd Amendment Act, 2005

CHAPTER 91 Important Doctrines of Constitutional Interpretation

DOCTRINE OF SEVERABILITY

1. Meaning of the Doctrine

The doctrine of severability is also known as the doctrine of separability. This doctrine was devised by the Supreme Court to resolve the problem of the validity of laws which are declared as unconstitutional.

When a part of the law is declared as institutional, then a question arises whether the whole of the law is to be declared void or only that part of the law, which is unconstitutional should be declared as void. According to this doctrine, if the offending provision of the law can be separated from that provision which is constitutional, then only that part of the law, which is offending, is to be declared as void and not the whole of the law. In other words, if the invalid part of the law can be separated from the rest, then the rest may continue to be valid and operative. If, however, it is not possible to separate the valid part of the law from the invalid part, then the whole of the law is declared as void.

2. Basis of the Doctrine

Article 13 is the basis of the doctrine of severability. It makes the following two provisions in this regard:

1. Article 13(1) deals with the pre-constitution laws and declares that all such laws are void to the extent to which they are inconsistent with the Fundamental Rights[1].
2. Article 13(2) deals with the post-constitution laws and prohibits the state from making a law which takes away or abridges the Fundamental Rights and any such law is void to the extent of the contravention[2].

Only that portion of a law, which violates the Fundamental Rights, can be declared as void and not the whole of it.

The Supreme Court has explained the doctrine of severability in the following way[3]:

> "The question whether a statute which is void in part is to be treated as void in toto, or whether it is capable of enforcement as to that part which is valid. The answer to this question must depend on whether what is valid could be separated from what is invalid, and that is a question which has to be decided by the Court on a consideration of the provisions of the Act."

3. Propositions of the Doctrine

The Supreme Court has laid down the following propositions (rules) regarding the doctrine of severability[4]:

1. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is the determining factor. The test to be applied is whether the

[1] Article 13(1) reads as follows: "(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

[2] Article 13(2) reads as follows: "(2) The State shall not make law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

[3] *R.M.D. Chamarbaugwalla* vs. *Union of India* (1957).

[4] *Ibid.*

legislature would have enacted the valid part if it had known that the rest of the statute was invalid.

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable.
3. Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole.
4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.
5. The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different section; it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provision therein.
6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation.
7. In determining the legislative intent on the question of separability, it will be legitimate to take into account the history of the legislation, its object, the title and the preamble to it.

4. Important Cases

The important cases relating to the doctrine of severability and their judgements are given in Table 91.1.

Table 91.1 Important Cases Relating to the Doctrine of Severability

Sl. No.	Case (Year)	Supreme Court Judgement
1.	A.K. Gopalan vs. State of Madras (1950)	It struck down Section 14 of the Preventive Detention Act (1950) on the ground that it violates the fundamental right under Article 22 of the Constitution. It declared the rest of the Act as valid and effective[5].
2.	State of Bombay vs. F.N. Balsara (1951)	It declared eight sections of the Bombay Prohibition Act (1949) as ultra-vires on the ground of infringement of the fundamental rights. It held that the void provisions did not affect the validity of the entire Act.
3.	R.M.D. Chamarbaugwalla vs. Union of India (1957)	It held that the provisions of the Prize Competitions Act (1955) were severable and struck down those provisions which related to competitions involving skill. In this case, the validity of Section 2(d) of the Act, which included competition of gambling as well as those involving skill, was challenged. According to Article 19(1)(g), the Parliament can restrict prize competitions only of a gambling nature but not those involving skill.

[5]The Supreme Court observed: "The impugned Act minus this section can remain unaffected. The omission of this section will not change the nature or the structure or the object of the legislation. Therefore, the decision that Section 14 is ultra-vires, does not affect the validity of the rest of the Act".

Sl. No.	Case (Year)	Supreme Court Judgement
4.	Minerva Mills vs. Union of India (1980)	It struck down sections 4 and 55 of the 42nd Amendment Act (1976) for being beyond the amending power of the Parliament. It declared the rest of the Act as valid.
5.	Kihoto Hollohan vs. Zachillhu (1992) (Popularly known as the Defection case)	It declared paragraph 7 of the Tenth Schedule (which was inserted by the 52nd Amendment Act, 1985) as unconstitutional for violating the provision under Article 368(2)[6]. It upheld the rest of the Tenth Schedule (i.e., Tenth Schedule minus paragraph 7 is valid).

DOCTRINE OF WAIVER

1. Meaning of the Doctrine

The doctrine of waiver is based on the premise that a person who is entitled to a right or privilege is at liberty to waive or give up that right or privilege. It is a voluntary renunciation of a known right or privilege.

The doctrine of waiver is defined in the following way[7]:

> "Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them."

It must be noted here that the doctrine of waiver is not applicable to the fundamental rights in India. In other words, a citizen can not waive his fundamental rights in India. On the other hand, the doctrine of waiver is applicable to the fundamental rights in USA. In other words, an American citizen can waive his fundamental rights. In short, there is the doctrine of non-waiver in India.

2. Position In India

With respect to the application of the doctrine of waiver to India, the Supreme Court made the following observations[8]:

1. Fundamental Rights cannot be waived by a citizen. They are mandatory on the state and necessary to attain the objectives enshrined in the Preamble. Hence, no citizen can relieve the state of this obligation which is imposed on it by the constitution.
2. The doctrine of waiver enunciated by some American Judges in construing the American Constitution cannot be introduced in our constitution.
3. The fundamental rights have not been put in the Constitution merely for individual benefit, though ultimately, they come into operation in considering individual rights. They have been put there, as a matter of public policy and the doctrine of waiver can have no application to provisions of law, which have been enacted as a matter of constitutional policy.
4. Reference to some of the articles, inter alia, articles 15(1), 20, 21, makes the proposition quite plain. A citizen cannot get discrimination by telling the State "You can discriminate", or get convicted by waiving the protection given under articles 20 and 21.

[6]Paragraph 7 requires ratification under the proviso to Article 368(2) for excluding the jurisdiction of High Courts under Article 226 and Supreme Court under Article 136.

[7]Surendra Malik and Sudeep Malik, Supreme Court on Doctrines and Maxims, Eastern Book Company, 2014, pp. 697-698.

[8]*Basheshar Nath* vs. *Commissioner of Income Tax* (1958).

Table 91.2 Important Cases Relating to the Doctrine of Waiver

Sl. No.	Case (Year)	Supreme Court Judgement
1.	Behram Khurshid Pesikaka vs. State of Bombay (1954)	It held that in a criminal prosecution, it is not open to an accused person to waive his fundamental rights and get convicted.
2.	Basheshar Nath vs. Commissioner of Income Tax (1958)	It rejected the contention of the respondent that the petitioner by voluntarily entering into an agreement to pay the tax had waived his fundamental right guaranteed under Article 14. It upheld the contention of the petitioner holding that the fundamental rights could not be waived.
3.	Olga Tellis vs. Bombay Municipal Corporation (1985) (Popularly known as the Pavement Dwellers case)	It held that a person cannot waive any of the fundamental rights conferred upon him by any of his act and there cannot be any estoppel against the constitution. It asserted that the high purpose which the constitution seeks to achieve by conferment of fundamental rights is not only to benefit the individual but to secure the larger interests of the community.
4.	Nar Singh Pal vs. Union of India (2000)	It reiterated that the fundamental rights under the constitution cannot be bartered away. It asserted that the fundamental rights cannot be compromised, nor can there be any estoppel against the exercise of fundamental rights.

5. Whatever be the position in America, no distinction can be drawn here, as has been attempted in the United States of America, between the fundamental rights which may be said to have been enacted for the benefit of the individual and those enacted in public interest or on grounds of public policy.
6. Ours is a nascent democracy and situated as we are, socially, economically, educationally, and politically, it is the sacred duty of the Supreme Court to safeguard the fundamental rights.

3. Important Cases

The important cases relating to the doctrine of waiver and their judgements are given in Table 91.2.

DOCTRINE OF ECLIPSE

1. Meaning of the Doctrine

The prospective nature of the provision under Article 13(1) of the constitution has led to the emergence of the doctrine of eclipse. This provision deals with the pre-constitution laws and declares that all such laws are void to the extent to which they are inconsistent with the Fundamental Rights[9].

The doctrine of eclipse is based on the notion that a pre-constitutional law which is inconsistent with a fundamental right is not a nullity or void from its very inception. Such a law becomes only inoperative from the date of the commencement of the constitution. It is overshadowed or eclipsed by the fundamental right and remains dormant but is not dead altogether. It is not wiped out completely from the statute book. It continues to exist (i) for all past transactions; (ii) for the enforcement of rights acquired and liabilities incurred before the date of the commencement of the constitution; and (iii) for the determination of rights of non-citizens who have not been given the fundamental rights by the constitution. Thus, it does not become void "in toto" or for all purposes or for all times or for all persons.

[9]Article 13(1) reads as follows: "(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

However, if the shadow cast on such a law by the relevant fundamental right is removed by an amendment of the constitution, then the law would again become constitutional and enforceable. In other words, the amendment of the fundamental right makes the impugned law free from all blemish or infirmity.

2. Formulation of the Doctrine

The doctrine of eclipse was enunciated by the Supreme Court in the *Bhikaji* case[10] (1955). In this case, Section 43 of the Motor Vehicles Act (1939) was amended by the Central Provinces and Berar Motor Vehicles (Amendment Act 1947). This provision empowered the State Government to take over the motor transport business to the exclusion of individual operations. But it became void with the commencement of the constitution in 1950 as it violated the fundamental right under Article 19(1)(g).

Later, the 1st Amendment Act (1951) amended Article 19(6) and enabled the government to take over any trade or business either exclusively or in competition with the individuals. Consequently, the State Government issued a notification to take over the motor transport business. This notification was challenged in the Supreme Court. The State Government argued that from January 26, 1950 to June 18, 1951, Section 43 of the Motor Vehicles Act (1939) remained invalid, but the amendment of the provision under Article 19(6) by the 1st Amendment Act (1951) made the same Section 43 of the Act valid again.

Finally, the Supreme Court held that the impugned Act became, for the time being, eclipsed by the fundamental right but the amendment of Article 19(6) removed the shadow. In other words, the court upheld the validity of the notification by applying the doctrine of eclipse.

3. Application to Post-Constitutional Laws

Article 13(1) deals with the pre-Constitution laws while Article 13(2) deals with the post-Constitution laws. The latter prohibits the state from making a law which takes away or abridges the fundamental rights and any such law is void to the extent of the contravention[11].

In *Deep Chand* case[12] (1959), the Supreme Court held that the doctrine of eclipse applies only to the pre-Constitution laws and not to the post-Constitution laws. This is because, a post-Constitution law which contravenes a fundamental right is a nullity or void from its very inception and a still-born law. Therefore, it cannot be revived by a subsequent constitutional amendment. Accordingly, the court upheld the constitutionality of the Uttar Pradesh Transport Service (Development) Act, 1955 saying that it did not violate Article 31 of the Constitution.

In *Mahendra Lal Jain* case[13] (1962), the Supreme Court reiterated its verdict delivered in *Deep Chand* case[14] (1959) and held that the doctrine of eclipse cannot be applied to the post-Constitution laws. The court observed:

> "The doctrine of eclipse will apply to pre-Constitution laws which are governed by Article 13(1) and would not apply to post-Constitution laws which are governed by Article 13(2). Unlike a law governed by Article 13(1) which was valid when made, the law made in contravention of the prohibition contained in Article 13(2) is a stillborn law either wholly or partially depending upon the extent of the contravention. Such a law is dead from the beginning and there can be no question of its revival under the doctrine of eclipse".

However, the position in *Ambica Mills* case[15] (1974) was different. In this case, the Supreme Court reversed its earlier stand and applied the doctrine of eclipse even to a post-Constitution law. The court held that a post-Constitution law which violates the

[10] *Bhikaji Narain Dhakras* vs. *State of M.P.* (1955).

[11] Article 13(2) reads as follows: "(2) The State shall not make law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

[12] *Deep Chand* vs. *State of U.P.* (1959).

[13] *Mahendra Lal Jain* vs. *State of U.P.* (1962).

[14] *Deep Chand* vs. *State of U.P.* (1959).

[15] *State of Gujarat* vs. *Shri Ambica Mills Ltd.* (1974)

fundamental rights is not a nullity or void in all cases and for all purposes. Further, it said that there are many exceptions to the doctrine of absolute nullity and hence, it cannot be regarded as a universal rule. A post-Constitution law which violates the fundament right conferred by Article 19 will be effective as regards to non-citizens because fundamental rights are not conferred on them. On the other hand, such a law will become a nullity or void only against citizens because fundamental rights are available to them.

Accordingly, the Bombay Labour Welfare Funct Act (1953) was held to be valid and operative with regard to non-citizens.

Later, the Supreme Court applied the doctrine of eclipse to a post-Constitution law even against citizens in *Dulare Lodh* case[16] (1984).

DOCTRINE OF TERRITORIAL NEXUS

1. Meaning of the Doctrine

The doctrine of territorial nexus is rated to Article 245 which deals with the extent of laws made by the Parliament and the State Legislatures. It contains the following provisions:

1. The Parliament is empowered to make laws for the whole or any part of the territory of India. In addition, it can also make "extra-territorial legislation". This implies that the Parliamentary laws are applicable not only to the persons and property within the territory of India but also to the Indian citizens and their property in any part of the world.
2. A State Legislature is empowered to make laws for the whole or any part of the state. Unlike the Parliament, a State Legislature cannot make "extra-territorial legislation".

From the above, it is clear that the laws made by a State Legislature are not applicable outside the state. However, there is one exception to this general rule i.e., an extra-territorial legislation made by a State Legislature is valid when there is a sufficient nexus between the state and the object. This is known as the doctrine of territorial nexus.

According to the doctrine of territorial nexus, the object to which a state law applies need not be physically located within the state territory, but it is required that there should be a sufficient nexus or connection between the state and the subject-matter of the law. This means that a state law having extra-territorial operation is held valid by applying the doctrine of territorial nexus.

2. Formulation of the Doctrine

In the pre-Constitution period, there were three important cases in which the doctrine of territorial nexus was applied. The Federal Court applied the doctrine in *Raleigh* case[17] (1944) and *Wadia* case[18] (1949) while the Privy Council applied it in *Wallace* case[19] (1948). These three cases were related to the income-tax law.

In the post-Constitution period, the Supreme Court applied the doctrine in *R.M.D. Chamarbaugwalla* case[20] (1957). This case was related to the law imposing a tax on gambling. In this case, the court held that if there is a sufficient territorial nexus between the person sought to be taxed and the state seeking to tax him, the taxing law is upheld. It also clarified that the sufficiency of territorial nexus involves a consideration of the following two important elements:

1. The nexus must be real and not illusory; and
2. The liability sought to be imposed must be relevant to that nexus.

In *TISCO* case[21] (1958), the Supreme Court applied the doctrine to the sales-tax law. In

[16] *Dulare Lodh* vs. *IIIrd Additional District Judge, Kanpur* (1984).

[17] *Governor-General* vs. *Raleigh Investment company* (1944).

[18] *A.H. Wadia* vs. *Commissioner of Income-Tax* (1949).

[19] *Wallace Brothers and Company Limited* vs. *Commissioner of Income-Tax* (1948).

[20] *State of Bombay* vs. *R.M.D. Chamarbaugwalla* (1957).

[21] *Tata Iron and Steel Company* vs. *State of Bihar* (1958).

this case, the court observed that this doctrine does not impose the tax, but it only indicates the circumstances in which a tax imposed by a law shall be enforced in a particular case.

In *NTPC* case[22] (2002), the Supreme Court has explained the doctrine in the following way:

> "It is by reference to the ambit or limits of territory by which the legislative powers vested in parliament and the State Legislatures are divided in Art. 245. Generally speaking, a legislation having extraterritorial operation can be enacted only by Parliament and not by any State Legislature; possibly the only exception being one where extra-territorial operation of a State legislation is sustainable on the ground of territorial *nexus*. Such territorial *nexus*, when pleaded must be sufficient and real and not illusory."

3. Application to Non-Tax Laws

The doctrine of territorial nexus is applicable not only to tax laws like income-tax law, law imposing a tax on gambling and sales-tax law but also to other kinds of laws.

Thus, in *Charusila Dasi* case[23] (1959), the Supreme Court held that a State Legislature is empowered to make laws with respect to charitable and religious trusts situated within the territory of the state even though some part of the trust property is situated in another state. As a natural corollary to this, the State Legislature is also empowered to make laws in respect of the trustees, their servants and agents who are in that state to administer the trust. Accordingly, the court upheld the validity of a law made by the Bihar Legislature with respect to trust property situated in the state of West Bengal.

Likewise, in *Shrikant* case[24] (1994), the Supreme Court held that the Gujarat State was empowered to make the law so as to provide that the ceiling of agricultural land of a person in that State could be determined by taking into account the agricultural land held by him outside that state also. Accordingly, the court upheld the validity of the Gujarat Agricultural Land Ceiling Act (1960).

4. Exceptions to the Doctrine

The doctrine of territorial nexus is not applicable in the following two situations:

1. When a state government (while acting under the Motor Vehicles Act – a Central legislation) approves a scheme for inter-state routes for the State Transport Undertaking. In *Khazan Singh* case[25] (1973), the Supreme Court upheld the validity of a Uttar Pradesh scheme nationalizing certain routes between that State and the State of Rajasthan.
2. When a state carry on trade and business under the provision of Article 298. In the same *Khazan Singh* case[26] (1973), the Supreme Court held that the trade and business to be carried on by a state need not be restricted to the area within its boundaries.

DOCTRINE OF PITH AND SUBSTANCE

1. Meaning of the Doctrine

Article 246 deals with the division of legislative powers between the Parliament and the State Legislatures. It specifies the different subjects of legislation in three lists, namely, List I (Union List), List II (State List) and List III (Concurrent List). Accordingly, the Parliament or a State Legislature should make laws within their respective jurisdictions and should not encroach upon the other's sphere. If it encroaches, then the validity of the law enacted by it is determined by applying the doctrine of pith and substance.

According to this doctrine, a law in question must be looked into as an organic whole and not as a mere collection of sections, for

[22] *State of A.P.* vs. *National Thermal Power Corporation Limited* (2002).
[23] *State of Bihar* vs. *Charusila Dasi* (1959).
[24] *Shrikant Bhalchandra Karulkar* vs. *State of Gujarat* (1994).
[25] *Khazan Singh* vs. *State of U.P.* (1973).
[26] *Ibid.*

determining the true nature and character of the impugned law i.e., the pith and substance of the law. If it is found that the pith and substance of the impugned law relates to the subject within the domain of the Legislature enacting the law, then the law would be held valid even though it incidentally encroaches on subjects which have been assigned to another Legislature. Further, for applying the doctrine, one must have regard (a) to the enactment as a whole, (b) to its main objects, and (c) to the scope and effect of its provisions.

2. Rationale of the Doctrine

The doctrine of pith and substance was evolved by the Privy Council when it determined appeals from Canada or Australia involving the question of legislative competence of the Centre, or the states in those federations. Later, this doctrine came to be established in India where it derives its genesis from the approach adopted by the courts including the Privy Council in dealing with controversies arising in other federations.

While explaining the rationale of the doctrine, the Supreme Court made the following observation[27]:

> "It must be remembered that we are construing a federal Constitution. It is of the essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between the Centre and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the Constitution enumerates elaborately the topics on which the Centre and the States could legislate, some overlapping of the fields of legislation is inevitable".

3. Principles of the Doctrine

In the pre-Constitution period, the doctrine of pith and substance was applied by the Privy Council in *Prafulla Kumar* case[28] (1947). This case involved the interpretation of the division of powers under the Government of India Act, 1935. In this case, the validity of the Bengal Money Lenders Act, 1946 was challenged on the ground that it was ultra-vires the Bengal Legislature in so far as it related to "promissory notes" which was a central subject. The Calcutta High Court held the Act to be intra-vires while the Federal Court, on appeal, reversed it. Finally, the Privy Council held that the Act was, in pith and substance, a law in respect of "money lending" and "money lenders"—a state subject and hence, was valid even though it incidentally encroached on "promissory notes".

In the above case, the Privy Council laid down the following principles of the doctrine of pith and substance:

1. It is not possible to make a clear-cut demarcation between the powers of the Federal Legislature and the Provincial Legislature. The powers are bound to overlap from to time. where they overlap, the questions must be asked are :
   (a) What, in pith and substance, is the effect of the enactment of which complaint is made?
   (b) In what list is its true nature and character to be found?

   If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to the Provisional Legislature could never effectively be deals with.
2. The extents of the invasion by the Provinces into subjects enumerated in the Federal List has to be considered. No doubt it is an important matter, not because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the pith and substance of the impugned Act.
3. Where the three lists come in conflict, List I has priority over Lists III and II, and List III has priority over List II. But, the question still remains, priority in what respect? Does the priority of the Federal Legislature prevent the Provincial Legislature from dealing with any matter

[27] *A.S. Krishna* vs. *State of Madras* (1956).
[28] *Prafulla Kumar Mukherjee* vs. *Bank of Commerce* (1947).

Table 91.3 Important Cases Relating to the Doctrine of Pith and Substance

Sl. No.	Case (Year)	Supreme Court Judgement
1.	State of Bombay vs. F.N. Balsara (1951)	It upheld the validity of the Bombay Prohibition Act, 1950. This Act was challenged on the ground that in encroached upon a matter enumerated in the Union List.
2.	D.N. Banerji vs. P.R. Mukherjee (1952)	It upheld the validity of the Industrial Disputes Act of the Parliament. This Act (in so far as it applied to the municipalities) was challenged on the ground that it related to the local government which was a subject enumerated in the State List.
3.	State of Rajasthan vs. G. Chawla (1958)	It upheld the validity of the Rajasthan Act which restricted the use of sound amplifiers. This Act was challenged on the ground that it encroached upon the subject of broadcasting or communication which is mentioned in the Union List.
4.	State of Gujarat vs. Shantilal Mangaldas (1969)	It held that the doctrine of pith and substance is applicable in determining whether an Act is within the competence of the legislature; it is wholly irrelevant in determining whether the Act infringes any fundamental right.
5.	M. Ismail Faruqui vs. Union of India (1994)	It upheld the validity of the Acquisition of Certain Area at Ayodhya Act, 1993 made by the Parliament. It held that the pith and substance of the Act was 'acquisition of property' and not related to 'public order' and hence, it fell within the ambit of the Concurrent List.
6.	Zameer Ahmed Latifur Rehman Sheikh vs. State of Maharashtra (2010)	It upheld the validity of the Maharashtra Control of Organised Crime Act, 1999. The Act was challenged on the ground that it encroached upon the subject enumerated in the Union List.

which may incidentally affect any item in its list or in each case has one to consider what the substance of the Act is and, whatever its ancillary effect, attribute it to the appropriate list according to its true character? The latter is the true view.

In the post-Constitution period, the Supreme Court has consistently applied the above principles in a number of cases.

4. Important Cases

The important cases relating to the doctrine of pith and substance and their judgements are given in Table 91.3.

DOCTRINE OF COLOURABLE LEGISLATION

1. Meaning of the Doctrine

The constitution (under Article 246) provides for the division of legislative powers between the Parliament and the State Legislatures. It enumerates the legislative subjects in three lists, namely, the Union List, the State and the Concurrent List under the Seventh Schedule. Both are required to operate within their respective legislative competence.

But, some times, a legislature makes a law which, though in form appears to be within its competence, in effect and substance lies beyond its ambit. Then the law would be declared as void. In other words, the different colour given to the law (by the legislature so as to bring it within its ambit) would not save it from being declared as invalid. Such a law is called as colourable legislation.

Colourable legislation would emerge only when a legislature had no power to legislate on an item either because it was not included in the list assigned to it under the respective entries in the Seventh Schedule, or on account of limitations imposed whether under Part III of the Constitution (relating to

the Fundamental rights) or any other power under the constitution.

The whole doctrine of colourable legislation is based upon the maxim that "you cannot do indirectly, what you cannot do directly" (i.e., what cannot be done directly, cannot also be done indirectly). This means that the use of the expression 'colourable legislation' seeks to convey that by enacting the legislation in question, the legislature is seeking to do indirectly what it cannot do directly.

2. Propositions of the Doctrine

The Supreme Court has laid down the following propositions in respect of the doctrine of colourable legislation[29]:

1. If the constitution distributes the legislative powers amongst different legislative bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect of the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression 'colourable legislation' has been applied in judicial pronouncements.
2. The idea conveyed by the expression that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise.
3. It is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation.
4. The legislature cannot violate the constitutional prohibitions by employing an indirect method. In cases like these, the enquiry must always be as to the true nature and character of the challenged legislation, and it is the result of such investigation and not the form alone that will determine as to whether or not it relates to a subject which is within the power of the legislative authority. For the purpose of this investigation the court would certainly examine the effect of the legislation and take into consideration its object, purpose or design. But these are only relevant for the purpose of ascertaining the true character and substance of the enactment and the class of subjects of legislation to which it really belongs and not for finding out the motives which induced the legislature to exercise its powers.
5. The doctrine of colourable legislation does not involve any question of *bona fides* or *mala fides* on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not in thus always a question of power.
6. A Court must be blind indeed if it looks merely at the language of a statute and ignores its obvious purpose, effect and operation. Hence, when, a statute is impugned as being a mere colourable device to evade constitutional provisions, the Court is required to scrutinize in its entirety, the impugned statute as well as

[29] *K.C. Gajapati Narayan Deo* vs. *State of Orissa* (1953).

other Bills or Acts which may form part of a scheme for such evasion, for the purpose of ascertaining "the true nature and character" or "pith and substance" of the impugned statute. Sometimes, it may so happen that statute, when considered independently, may be free from any objection but if it could be shown that it is part of a general scheme on the part of the Legislature, by a series of Acts to achieve an object which it could not validly achieve in one piece of legislation, the statute would also be struck down as unconstitutional.

3. Doctrine of Fraud on the Constitution

The doctrine of colourable legislation is also known as the doctrine of fraud on the constitution. The Supreme Court, in this context, has made the following observation[30]:

> "Colourable piece of legislation is a legislation ostensibly under one or the other of the powers conferred by the constitution but in substance and reality, not falling within the content of that power. The failure to comply with a Constitutional condition for the exercise of legislative power may be overt or it may be covert. When it is overt, we say the law is obviously bad for non-compliance with the requirements of the Constitution, that is to say, the law is *ultra vires*. When, however, the non-compliance is covert, we say that it is a 'fraud on the Constitution', the fraud complained of being that the Legislature pretends to act within its power while in fact it is not so doing. Therefore, the charge of 'fraud on the Constitution' is, on ultimate analysis, nothing but a picturesque and epigrammatic way of expressing the idea of non-compliance with the terms of the Constitution".

4. Doctrine of Fraud on Legislative Power

It must be noted here that the doctrine of fraud on the Constitution is different from the doctrine of fraud on legislative power. The Supreme Court, while explaining this distinction, made the following observation[31]:

1. The doctrine of fraud on legislative power means that the legislature really has the power, but does not exercise that power. It merely pretends to have exercised the power. In the eye of law, such an Act is not a law at all, but is a mere pretence of law and the courts will not take notice of such a law.
2. The doctrine of fraud on the Constitution is altogether a different principle and a serious charge. When there is a constitutional prohibition to make an Act, but the legislature, in spite of the constitutional prohibition, enacts such a law, it is a fraud on the Constitution. Therefore, the distinction between the fraud on legislative power and fraud on the Constitution is clear and unambiguous.
3. The principle of fraud on legislative power is applicable when the legislature has power to enact, but has not exercised that power as envisaged upon. On the other hand, the doctrine of fraud on the Constitution means that when the legislature has no power and in spite of the constitutional prohibition, it makes an enactment in pretence of or purported exercise of the power. It would, therefore, be necessary to examine these concepts in the light of the related subject, the legislative history, the respective entries in the lists concerned of the Seventh Schedule and the power of the legislature to determine whether the legislature has competence to enact law or enacted it by playing a fraud on the Constitution/colourable exercise of power.

[30] *State of Bihar* vs. *Kameshwar Singh* (1952).

[31] *S.S. Bola* vs. *B.D. Sardana* (1997).

Table 91.4 Important Cases Relating to the Doctrine of Colourable Legislation

Sl. No.	Case (Year)	Supreme Court Judgement
1.	State of Bihar vs. Kameshwar Singh (1952)	It invalidated the Bihar Land Reforms Act, 1950. It held that the provision of the Act relating to the payment of compensation for the acquisition of surplus land was only a pretension and not a reality.
2.	K.C. Gajupati Narayan Deo vs. State of Orissa (1953)	It upheld the validity of the Orissa Agricultural Income tax (Amendment) Act, 1950. It held that the Act was not a colourable legislation as it fell within the legislative competency of the State Legislature.
3.	K.T. Moopil Nair vs. State of Kerala (1960)	In declared the Travancore Cochin Land Tax Act, 1955 as invalid. It held that the Act violated Articles 14 and 19(1)(f) and its provisions were confiscatory in nature.
4.	M.R. Balaji vs. State of Mysore (1962)	It declared the State order reserving 68 per cent of seats in educational institutions to the backward class students as void. It held that the executive order violated Article 15(4) and hence, was a fraud on the Constitution.

5. Important Cases

The important cases relating to the doctrine of colourable legislation and their judgements are given in Table 91.4.

DOCTRINE OF IMPLIED POWERS

1. Meaning of the Doctrine

The doctrine of implied powers is also known as the doctrine of implication. This doctrine is based on the maxim that "whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect".

According to the Black's Law Dictionary, the term "implied power" means "a political power that is not enumerated but that nonetheless exists because it is needed to carry out an express power".

While defining the doctrine of implied powers, Craies observed: "One of the first principles of law with regard to the effect of an enabling act is that if a Legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view".

Similarly, C.B. Pollock, while dealing with this doctrine, said[32]: "whenever anything is authorized, and especially if, as matter of duty, required to be done by law, and it is found impossible to do that thing unless something else not authorized in express terms be also done, then that something will be supplied by necessary intendment." This doctrine can be invoked in cases "where an Act confers a jurisdiction it also confers by implication the power of doing all such acts, or employing such means as are essentially necessary to its execution."

2. Scope of the Doctrine

The Supreme Court has explained the scope and effect of the doctrine of implied powers in the following way[33]:

> "The doctrine of implied powers can be legitimately invoked when it is found that a duty has been imposed or a power conferred on an authority by a statute and it is further found that the duty cannot

[32] *Michaely Fenton and James Fraser* vs. *John Stephen, Hempton* (1858).

[33] *Bidi, Bidi Leaves and Tobacco Merchants Association* vs. *State of Bombay* (1961).

be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. In such a case, in the absence of an implied power the statute itself would become impossible of compliance. The impossibility in question must be a general nature as that the performance of duty or the exercise of power is rendered impossible in all cases. It really means that the statutory provision would become a dead-letter and cannot be enforced unless a subsidiary power is implied."

3. Application of the Doctrine

The Supreme Court has applied the doctrine of implied powers in a number of constitutional cases. The important, among them, are as follows:

In *Gopal Chandra Misra* case[34] (1978), the Supreme Court held that a judge of a State High Court has an implied power under the provisions of Article 217 to revoke his resignation even after his resignation letter has been received.

In *Rupa Ashok Hurra* case[35] (2002), the Supreme Court held that it has an implied power (i.e., inherent power) which enables it to reconsider its own judgements. It suggested that a curative petition can be filed for seeking reconsideration of a judgement that has become final after dismissal of a review petition under the provisions of Article 137. It said that a curative petition is allowed in order to cure a gross miscarriage of justice and to prevent abuse of its process.

In *Raja Ram Pal* case[36] (2007), the Supreme Court held that the Parliament has an implied power under the provisions of Article 105 to expel its members for its contempt.

In *Salil Sabhlok* case[37] (2013), the Supreme Court held that Article 316, which grants a State Governor the power to appoint the members of the State Public Service Commission (SPSC), also grants the implied power to lay down the procedures for such appointments.

4. Doctrine of Implied Prohibition

The doctrine of implied prohibition is the opposite of the doctrine of implied powers. This doctrine is based on the maxim that "express mention of one thing implies the exclusion of another".

The doctrine of implied prohibition is applied in USA and Australia. In these federal countries, only the powers of the Central Legislature are enumerated in the Constitution and the residuary powers have been left to the State Legislature. This means that there is an implied prohibition on the Central Legislature to make laws on the residuary subjects. However, this prohibition is not applicable to those encroachments (on the residuary powers of the State Legislature) which are incidental and ancillary to the proper execution of the express powers granted to the Central Legislature.

The doctrine of implied prohibition is not applicable in India. In the Indian Constitution, the powers of both the Central Legislature and the State Legislature have been separately enumerated the Parliament can legislate on the subjects enumerated in the Union List, Concurrent List and also on the residuary subjects. On the other hand, a State Legislature can legislate on the subjects enumerated in the State List and Concurrent List. However, the doctrine of incidental and ancillary powers is applied in India also.

• DOCTRINE OF INCIDENTAL AND ANCILLARY POWERS

1. Meaning of the Doctrine

The legislative powers of the Parliament and the State Legislatures are mentioned in the Seventh Schedule of the Constitution. Every such power (i.e., expressly mentioned

[34] *Union of India* vs. *Gopal Chandra Misra* (1978).
[35] *Rupa Ashok Hurra* vs. *Ashok Hurra* (2002).
[36] *Raja Ram Pal* vs. *Speaker of the Lok Sabha* (2007).
[37] *State of Punjab* vs. *Salil Sabhlok* (2013).

legislative power) carries with it the incidental or ancillary power which is necessary to execute that power. In other words, the incidental and ancillary powers are those powers which are required to be exercised by the legislatures for the effective exercise of legislative powers expressly bestowed on them by the Constitution. In USA[38], such powers are called as "necessary and proper powers" while in Australia, they are described as "powers incidental to the execution of that power".

According to this doctrine, the entries enumerated in the three legislative lists are not to be read in a narrow or restricted sense and each general word in an entry should be held to extend to all incidental or ancillary matters which can fairly and reasonably be comprehended in it[39]. Hence, the power to levy tax would include the power to make provisions for checking tax evasion[40]. Similarly, the power to legislate with respect to collection of rent includes the power to legislate with respect to remission of rent[41].

However, the above logic of wider interpretation does not mean that the scope of the incidental or ancillary power can be extended to any unreasonable extent. Hence, the power to levy tax cannot be held to include the power to confiscate goods[42].

Further, this doctrine cannot be used as a cloak for extending the power of a legislature so as to comprehend a subject which is explicitly mentioned in a list. For example, the legislative power in respect of "betting and gambling" in Entry 34 of the State List does not include the power to impose taxes on betting and gambling which is explicitly mentioned as a separate subject in Entry 62 of the State List[43].

Moreover, this doctrine cannot be extended to the exercise of the legislative power colourably or by fraud on the constitution.

2. Rationale of the Doctrine

The Supreme Court has founded the doctrine of incidental and ancillary powers to relieve a statute from its invalidity or unconstitutionality. The court, while explaining the rationale of the doctrine, made the following observation[44]:

> "The courts have applied the doctrine of "pith and substance" and in some cases the doctrine of "incidental" or "ancillary" or "subsidiary power" of the legislature to uphold the law or to validate the law declared by the courts as invalid. Thereon, one of the doctrines is applied when the court finds that the law in pith and substance is within the legislative competence but incidentally trenches upon another subject of legislation. Equally, the doctrine of "ancillary or subsidiary power" of the legislature is applied when the court records a finding that the impugned Act is substantially within the legislative competence, but incidentally it trenches upon another subject of legislation assigned either to Parliament or the Legislature of a State as the case may be."
>
> "The doctrine of incidental or ancillary power is founded upon the principle that

[38] The American Constitution describes the incidental or ancillary powers of the Congress in the following way:

"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States or in any Department or Officer thereof".

[39] Justice Gajendragadkar, while explaining the doctrine of incidental and ancillary powers, made the following observation:

It is an elementary cardinal rule of interpretation that the words used in the Constitution which confer legislative power must receive the most liberal construction and if they are words of wide amplitude, they must be interpreted so as to give effect to that amplitude. It would be out of place to put a narrow or restricted construction on words of wide amplitude in a Constitution. A general word used in any entry ... must be construed to extend to all ancillary or subsidiary matters which can fairly and reasonably be held to be included in it."

[40] *Commissioner of Commercial Taxes* vs. *R.S. Jhaver* (1967).

[41] *United Provinces* vs. *Atiqa Begum* (1941).

[42] *Check Post Officer* vs. *K.P. Abdulla* (1970).

[43] *R.M.D. Chamarbaugwalla* vs. *State of Mysore* (1961).

[44] *S.S. Bola* vs. *B.D. Sardana* (1997).

Table 91.5 Important Cases Relating to the Doctrine of Incidental and Ancillary Powers

Sl. No.	Case (Year)	Supreme Court Judgement
1.	Chaturbhuj vs. Union of India (1959)	It held that the power to impose tax includes power of raising revenue by imposing licence fee.
2.	Rai Ramkrishna vs. State of Bihar (1963)	It held that the power to enact laws on a subject includes the power to make a valid law retrospectively, if the existing law on the same subject is declared as unconstitutional.
3.	Pathumma vs. State of Kerala (1978)	It held that the power to enact laws in respect of "money-lending and money-lenders; relief of agricultural indebtedness" includes power to enact a law relating to debt of agriculturists already paid by sale of property in execution of the decree and any measure to provide relief and recompense.
4.	State of Haryana vs. Sant Lal (1993)	It held that the power to levy sales tax cannot be used to include within that law merely transporters of goods.
5.	Godfrey Phillips India Limited vs. State of U.P. (2005)	It held that the power to impose tax includes all events concerning that tax, unless an event is included in another list.

in a case where on the face of a statute, it appears that the legislative subject falls both in the Union as well as the State List, but on a careful scrutiny it becomes clear that it falls merely incidentally in one list but substantially in another list. However, it cannot be regarded as the case of substantial encroachment trespassing into another field. The incidental encroachment, therefore, means that in enacting a legislation, the legislature has not traversed beyond the legislative field allotted to it by the arrangement of distribution of powers in the respective entries in the list concerned in the Seventh Schedule."

3. Important Cases

The important cases relating to the doctrine of incidental and ancillary powers and their judgements are given in Table 91.5.

DOCTRINE OF PRECEDENT

1. Meaning of the Doctrine

The doctrine of precedent (or the doctrine of stare decisis) is an English doctrine. According to this doctrine, the lower courts are bound by the decisions of the higher courts. Therefore, in Britain, every court is bound by the decisions of the House of Lords.

It is a settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of stare decisis is expressed in the maxim "stare decisis et non quieta movere", which means "to stand by decisions and not to disturb what is settled." Lord Coke aptly described this in his classic English version as "those things which have been so often adjudged ought to rest in peace." The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible.[45]

The above point has been aptly described by the former Chief Justice Chandrachud in the following way[46]:

> "It is sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the

[45] *Shanker Raju* vs. *Union of India* (2011).
[46] *Waman Rao* vs. *Union of India* (1980).

purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis."

2. Basis of the Doctrine

The doctrine of precedent has been incorporated in Article 141 of the Constitution. According to this provision, the law declared by the Supreme Court shall be binding on all courts within the territory of India. Hence, all the courts and tribunals including the High Courts in India are required to follow the decisions of the Supreme Court.

The Supreme Court has explained the significance of Article 141 of the Constitution in the following way[47]:

> "When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgement of the High court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity."

According to the Supreme Court, it is impermissible for the High Court to overrule the decision of the Apex Court on the ground that the Apex Court laid down the legal position without considering any other point. The Court further emphasized that it is not only a matter of judicial discipline for the High Courts in India, but also a mandate of the Constitution as provided in Article 141 that the law declared by the Apex Court shall be binding on all courts in the country[48].

Apart from Article 141 of the Constitution, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy[49].

3. Rationale of the Doctrine

In the hierarchical system of courts which exists in India, it is necessary for each lower tier, including the High Courts, to accept loyally the decisions of the higher tiers. It is inevitable in a hierarchical system of courts that there are decisions of the supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary. But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted. The better wisdom of the court below must yield to the higher wisdom of the court above. That is the strength of the hierarchical judicial system[50].

While explaining the rationale of the doctrine of precedent, the Supreme Court made the following observation[51]:

> "Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis etc. these rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice."

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[47] *Director of Settlements, A.P.* vs. *M.R. Apparao* (2002).
[48] *Suganthi Suresh Kumar* vs. *Jagdeeshan* (2002).
[49] *Krishena Kumar* vs. *Union of India* (1990).
[50] *Assistant Collector of Central Excise* vs. *Dunlop India Limited* (1984).
[51] *Government of Andhra Pradesh* vs. *A.P. Jaiswal* (2000).

The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law. The Supreme Court has enunciated the importance of the doctrine in the development of jurisprudence of law in the following way[52]:

> "Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law."

While stating the importance of consistent opinions in achieving harmony in the judicial system, the Supreme Court observed as follows[53]:

> "It is true that in the system of justice which is being administered by the courts, one of the basic principles which has to be kept in view, is that courts of coordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or on a question of law. If courts express different opinions on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy."

When a position in law is well-settled as a result of the judicial pronouncements of the Supreme Court, it would amount to judicial impropriety on the part of subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. The Supreme Court, in this context, observed as follows[54]:

> "Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relied to one of the parties. It is time that this tendency stops."

The Supreme Court cautioned that, "the judgments of this court are decisional between litigants but declaratory for the nation." This court further observed[55]:

> "Enlightened litigative policy in the country must accept as final the pronouncements of this court unless the subject be of such fundamental importance to national life or the reasoning is so plainly erroneous in the light of later thought that it is wiser to be ultimately right rather than to be consistently wrong. Stare decisis is not a ritual of convenience but a rule with limited exceptions."

DOCTRINE OF OCCUPIED FIELD

I. Meaning of the Doctrine

The doctrine of occupied field says that when the Parliament enacts a law on a particular subject and thereby occupies the field, a State Legislature will not have authority to make any law on that field. In other words, according to this doctrine, when a legislative field is already occupied by a central legislation, there would be no scope for a state legislation in that field. This doctrine is also known as the doctrine of covered field.

[52] *Union of India* vs. *Raghubir Singh* (1989).
[53] *Hari Singh* vs. *State of Haryana* (1993).
[54] *Dwarikesh Sugar Industries Limited* vs. *Prem Heavy Engineering Works Limited* (1997).
[55] *Ganga Sugar Corporation* vs. *State of U.P.* (1979).

If the matter is within the exclusive competence of the Parliament i.e., Union List (List I), then the State Legislature is prohibited to make any law with regard to the same[56]. Similarly, if any matter is within the exclusive competence of the State Legislature i.e., State List (List II), then it becomes a prohibited field for the Parliament[57]. On the other hand, if the matter is enumerated in the Concurrent List (List III), then both the Parliament as well as the State Legislature will have the competence to make the law.

There may be a situation where a State Legislature is making a law on a matter enumerated in the Concurrent List, it may notice that the legislative field is already occupied by a law of the Parliament.

Therefore, the doctrine of occupied field is relevant in the case of laws made with reference to entries in the Concurrent List[58]. In other words, the doctrine of occupied field can be applied only to the entries of the Concurrent List[59].

It must be noted here that the doctrine of occupied field originates from Article 254 which deals with the inconsistency (repugnancy) between laws made by the Parliament and the State Legislature.

2. Doctrine of Repugnancy

Article 254 declares that in case of any inconsistency between a parliamentary law and a state law in respect of matters enumerated in the Concurrent List, the parliamentary law shall prevail and the state law shall be void to the extent of repugnancy.

According to the Supreme Court, the repugnancy between the two laws may be ascertained on the following three principles:[60]

(i) Direct Conflict whether there is direct conflict between the two provisions;

(ii) Intended Occupation whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State legislature; and

(iii) Occupied Field whether the law made by Parliament and the law made by the State legislature occupied the same field.

In order to determine the question of repugnancy between the two laws, the Supreme Court laid down the following tests[61] (propositions):

1. It must be shown that the two enactments contain inconsistent and irreconcilable provisions so that they cannot stand together or operate in the same field.
2. There can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
3. Where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.
4. Where there is no inconsistency but a statute occupying the same field seeks to create district and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

Article 254 also contains an exception to the above rule of repugnancy. It says that if the state law has been reserved for the consideration of the President and has received his assent, then the state law shall prevail over the parliamentary law and operates in that state as valid law. However, the parliament may again supersede the state law (which has been assented to by the President) by subsequently enacting a law on the same matter. If the Parliament enacts such a law, then the state law would be void to the extent of repugnancy with the parliamentary law.

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[56] *Hindustan Lever* vs. *State of Maharashtra* (2003).
[57] *Ibid.*
[58] *Ibid.*
[59] *State of Rajasthan* vs. *Vatan Medical and General Store* (2001).
[60] *Deep Chand* vs. *State of U.P.* (1959).
[61] *M. Karunanidhi* vs. *Union of India* (1979).

3. Repugnancy Outside the Concurrent List

The question of repugnancy between the Parliamentary legislation and State legislation arises in two ways. First, where the legislations, though enacted with respect to matters in their allotted spheres, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, the Parliamentary legislation will predominate, in the first, by virtue of non-obstante clause in Article 246(1); in the second, by reason of Article 254 (1).[62]

The Supreme Court has further explained the above points of repugnancy in the following way[63]:

> "The question of repugnancy under Article 254 (1) between a law made by Parliament and a law made by the State Legislature arises only in case both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List, and there is direct conflict between the two laws. It is only when both these requirements are fulfilled that the State law will, to the extent of repugnancy become void. Article 254(1) has no application to cases of repugnancy due to overlapping found between List II on the one hand and List I and List III on the other. If such overlapping exists in any particular case, the State law will be ultra vires because of the non-obstante clause in Article 246(1)."

DOCTRINE OF PROSPECTIVE OVERRULING

1. Meaning of the Doctrine

The doctrine of prospective overruling is an American doctrine. It was applied in India for the first time by the Supreme Court in the *Golak Nath* case[64] (1967).

When a court overrules its earlier decision and announces a new ruling, it can restrict the application of the new ruling only to the future transactions so that the validity of the past transactions is not affected. This is known as the doctrine of prospective overruling. In other words, this doctrine enables a court to overrule an old precedent (stare decisis) from a future date only and not retrospectively.

In the *Golak Nath* case[65] (1967), the Supreme Court overruled its earlier verdicts delivered in the *Shankari Prasad* case[66] (1951) as well as in the *Sajjan Singh* case[67] (1964). In both the cases, the Supreme Court held that the Parliament's amending power under Article 368 also includes the power to amend the fundamental rights guaranteed in Part III of the constitution. Hence, a constitutional amendment act enacted to abridge or take away the fundamental rights is not void under Article 13(2). Later, in the *Golak Nath* case[68] (1967), the Supreme Court held that the amending power under Article 368 can not be used to abridge or take away the fundamental rights and a constitutional amendment act is "law" within the meaning of Article 13(2). But, the Supreme Court applied the doctrine of prospective overruling and declared that this decision will have only prospective operation and not retrospective operation. This means that the Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution so as to abridge or take away the fundamental rights enshrined therein. Further, the First Amendment Act, 1951, the Fourth Amendment Act, 1955 and the Seventeenth Amendment Act, 1964 will continue to be valid for the future.

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[62] *State of Kerala* vs. *M/s Mar Appraem Kuri Company Limited* (2012).
[63] *Hoechst Pharmaceuticals Limited* vs. *State of Bihar* (1983).
[64] *I.C. Golak Nath* vs. *State of Punjab* (1967).
[65] *Ibid.*
[66] *Shankari Prasad Singh* vs. *Union of India* (1951).
[67] *Sajjan Singh* vs. *State of Rajasthan* (1964).
[68] *I.C. Golak Nath* vs. *State of Punjab* (1967).

2. Formulation of the Doctrine

The Supreme Court negatived the contention in *Golak Nath* case[69] (1967) that prospective overruling amounts to judicial legislation. Explaining the Blackstonian theory of law, i.e., Judge discovers law and does not make law, and the efficacy of prospective overruling, the court made the following observation[70]:

> "The doctrine of 'prospective overruling' is a modem doctrine and is suitable for a fast moving society. It does not do away with the doctrine of stare decisis, but confines it to past transactions. It is true that in one sense the court only declares the law, either customary or statutory or personal law. While in strict theory, it may be said that the doctrine involves the making of law, what the court really does is to declare the law but refuses to give retroactivity to it. It is really a pragmatic solution reconciling the two conflicting doctrines, namely, that a court finds the law and that it does make the law. It finds the law but restricts its operation to the future. It enables the court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. It is left to the discretion of the court to prescribe the limits of the retroactivity and thereby the doctrine enables the court to mould the relief to meet the ends of justice. By the application of this doctrine, the past may be preserved and the future protected".

3. Basis of the Doctrine

The Supreme Court explained the legal and constitutional basis of the doctrine of prospective overruling in the following way[71]:

> "In India, there is no statutory prohibition against the court refusing to give retroactivity to the law declared by it. Indeed, the doctrine of res-judicata precludes any scope for retroactivity in respect of a subject-matter that has been finally decided between the parties. Further, the Indian court by interpretation reject retroactivity to statutory provisions though couched in general terms on the ground that they affect vested rights, the present case only attempts a further extension of the said rule against retroactivity.
>
> Our Constitution does not expressly or by necessary implication speak against the doctrine of prospective overruling. Indeed, Articles 32, 141 and 142 are couched in such wide and elastic terms as to enable this court to formulate legal doctrines to meet the ends of justice. The only limitation thereon is reason, restraint and injustice. Under Article 32, for the enforcement of the fundamental rights, the Supreme Court has the power to issue suitable directions or orders or writs. Article 141 says that the law declared by the Supreme Court shall be binding on all courts; and Article 142 enables it, in the exercise of its jurisdiction, to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. These articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such directions or pass such orders as are necessary to do complete justice.
>
> The expression 'declared' is wider than the words 'found or made'. To declare is to announce opinion. Indeed, the latter involves the process, while the former expresses result. Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as law. The law declared by the Supreme Court is the law of the land. If so, there is no acceptable reason why the court, in declaring the law in supersession of the law declared by it earlier, could not restrict the operation of the law, as declared, to the future and save the

[69] *Ibid.*
[70] *Ibid.*
[71] *Ibid.*

transactions, whether statutory or otherwise, that were effected on the basis of the earlier law. To deny this power to the Supreme Court on the basis of some outmoded theory that the court only finds law but does not make it is to make ineffective the powerful instrument of justice placed in the hands of the highest judiciary of this country."

4. Propositions of the Doctrine

The Supreme Court laid down three propositions with respect to the doctrine of prospective overruling. The court, in this context, observed as follows[72]:

"As this court for the first time has been called upon to apply the doctrine evolved in a different country, under different circumstances, it would like to move warily in the beginning and would lay down the following propositions:

(1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution;

(2) it an be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare a law binding on all the courts in India;

(3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

5. Rationale of the Doctrine

The Supreme Court has explained the rationale of the application of the doctrine of prospective overruling in the following way[73]:

"We have arrived at two conclusions, namely, (1) Parliament has no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights; and (2) this is a fit case to invoke and apply the doctrine of prospective overruling. What then is the effect of our conclusion on the instant case? Having regard to the history of the amendments, their impact on the social and economic affairs of our country, and the chaotic situation that may be brought about by the sudden withdrawal at this stage of the amendments from the Constitution, we think that considerable judicial restraint is called for. We, therefore, declare that our decision will not affect the validity of the Constitution (Seventeenth Amendment) Act, 1964, or other amendments made to the Constitution taking away or abridging the fundamental rights". We further declare that in future Parliament will have no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights".

According to the Supreme Court[74]:

1. The prospective declaration of law is a devise innovated by the apex court to avoid reopening of settled issues and to prevent multiplicity of proceedings.
2. It is also a devise adopted to avoid uncertainty and avoidable litigation.
3. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest.

6. Criticism of the Doctrine

While considering the various arguments made against the application of the doctrine of prospective overruling, the Supreme Court made the following observation[75]:

"Let us now consider some of the objections to this doctrine. The objections are: (1) the doctrine involved legislation by courts; (2) it would not encourage parties to prefer appeals as they would not get

[72] *Ibid.*
[73] *Ibid.*
[74] *Baburam* vs. *C.C. Jacob* (1999).
[75] *I.C. Golak Nath* vs. *State of Punjab* (1967).

any benefit therefrom; (3) the declaration for the future would only be obiter, (4) it is not a desirable change; and (5) the doctrine of retroactivity serves as a brake on court which otherwise might be tempted to be so fascile in overruling. But in our view, these objections are not insurmountable. If a court can overrule its earlier decision, there cannot be any dispute, when the court can do so, there cannot be any valid reason why it should not restrict its ruling to the future and not to the past. Even if the party filing an appeal may not be benefited by it, in similar appeals which he/she may file after the change in the law he/she will have the benefit. The decision cannot be obiter for what the court in effect does is to declare the law but on the basis of another doctrine restricts its scope. Stability in law does not mean that injustice shall be perpetuated."

7. Continuation of the Doctrine

It must be noted here that even though the judgement delivered in the *Golak Nath* case[76] (1967) was overruled in the *Kesavananda Bharati* case[77] (1973), the doctrine of prospective overruling was upheld and followed in several subsequent judgements.

Moreover, the Supreme Court has also extended the application of the doctrine to the matters arising under the ordinary statutes as well.

The judgement in *Mandal* case[78] (1992) postponing the operation for five years from the date of the judgment is an instance of, and an extension to the principle of prospective overruling.

In *Karunakar* case[79] (1993), the Supreme Court held that benefit of the decisions would be given only to the parties to the cases pending before the authorities from the date of the judgment but not to the actions already taken by the date of that judgment.

[76] *Ibid.*
[77] *Kesavananda Bharati* vs. *State of Kerala* (1973).
[78] *Indra Sawhney* vs. *Union of India* (1992).
[79] *Managing Director, ECIL, Hyderabad* vs. *B. Karunakar* (1993).

DOCTRINE OF HARMONIOUS CONSTRUCTION

1. Meaning of the Doctrine

When different provisions of the constitution are found to be in conflict with each other, the courts should interpret them harmoniously so as to avoid the conflictual implications between them. This is known as the doctrine of harmonious construction. This doctrine is also called as the rule of avoidance of conflict.

While explaining the doctrine of harmonious construction, Justice Venkatraama Aiyar observed[80]: "In case of two irreconcilable provisions, they should be so interpreted that effect can be given to both and none of the two is rendered nugatory".

Similarly, Justice Mukherjea said[81]: "If certain provisions in the constitution appear to be in conflict with each other, these provisions should be interpreted so as to effect a reconciliation between them so that, if possible, effect could be given to all".

The doctrine of harmonious construction should be understood in the light of the following points:

1. The court should read the constitution as a whole and take into consideration its different parts.
2. The court should proceed on the presumption that no conflict (between the different parts) was intended by the constitution-makers.

2. Application of the Doctrine

The Supreme Court has applied the doctrine of harmonious construction to reconcile the conflict:

1. Between the fundamental rights and directive principles of state policy;
2. Between different fundamental rights;

[80] *Sri Venkataramana Devaru* vs. *State of Mysore* (1957).
[81] *A.K. Gopalan* vs. *State of Madras* (1950).

3. Between fundamental rights and legislative privileges;
4. Between fundamental rights and amendment procedure;
5. Between fundamental rights and other parts of the constitution; and
6. Between different entries of the legislative lists in the seventh schedule.

The Supreme Court, on the application of the doctrine of harmonious construction to the fundamental rights and directive principles of state policy so as to give effect to both as much as possible, made the following observation[82]:

> "Although in earlier decision the court paid scant regard to the directives on the ground that the courts had little to do with them since they were not justiciable or enforceable like the fundamental rights, the duty of court in relation to the directives came to be emphasized in the later decision which reached its culmination in the *Kesavananda Bharati* case[83] (1973) laying down certain broad propositions. Law of these is that there is no disharmony between the directives and the fundamental rights because they supplement each other on aiming at the same goal of bringing about a social revolution and the establishment of a welfare state, which is envisaged in the preamble. The courts, therefore, have responsibility in so interpreting the Constitution as to ensure implementation of the directives and to harmonise the social objective underlying the directives with individual rights."

Similarly, the Supreme Court, while applying the doctrine of harmonious construction to the interpretation of the different entries of the legislative lists in the Seventh Schedule, made the following observation[84]:

> "It is also well settled that widest amplitude should be given to the language of the entries, but some of the entries in the different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between them. In this way it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the sections, so as to reconcile the respective powers they contain and to give effect to all of them. It is only when such a reconciliation proves impossible, then, and only then, should the overriding power of the Union legislature, the *non-obstante* clause, operate and the Union power prevail."

3. Important Cases

The important cases relating to the doctrine of harmonious construction and their judgements are given in Table 91.6.

DOCTRINE OF LIBERAL INTERPRETATION

1. Meaning of the Doctrine

According to the doctrine of liberal interpretation, the constitution must be interpreted in a broad and liberal manner and not in a narrow or pedantic sense. In other words, a broad and liberal spirit should inspire the interpreters of the constitution.

The doctrine of liberal interpretation envisages that the constitution should be interpreted not as a mere law but as the machinery by which the laws are to be made. It assumes that the constitution is a living and organic thing and hence, it must be interpreted broadly and liberally.

While explaining the doctrine of liberal interpretation, Justice Higgins made the following observation[85]:

> "Although we are to interpret the words of the Constitution on the same principles of interpretation as we apply to

[82] *Ranjan Dwivedi* vs. *Union of India* (1983).
[83] *Kesavananda Bharati* vs. *State of Kerala* (1973).
[84] *Calcutta Gas Co.* vs. *State of West Bengal* (1962).
[85] *Attorney-General for New South Wales* vs. *Brewerry Employees Union* (1908).

Table 91.6 Important Cases Relating to the Doctrine of Harmonious Construction

Sl. No.	Case (Year)	Supreme Court Judgement
1.	Sri Venkataramana Devaru vs. State of Mysore (1957)	It ruled that the right of a religious denomination to manage its own affairs in matters of religion under Article 26(b) is subject to Article 25(2)(b).
2.	M.S.M. Sharma vs. Krishna Sinha (1958)	It held that the fundamental right to freedom of speech and expression under Article 19(1)(a) is to be read subject to the privileges of House of Legislature guaranteed by Article 194(3).
3.	O.N. Mohindroo vs. Bar Council of Delhi (1968)	It held that the Parliament is exclusively empowered to legislative with respect to persons entitled to practice before the Supreme Court and the High Court, and the power to legislate with respect to the rest of the practitioners falls under the Concurrent List.
4.	D.A.V. College vs. State of Punjab (1971)	It held that no State has the legislative competence to prescribe any particular medium of instruction with respect to higher education, if it interferes with the power of Parliament under Union List.
5.	Kesavananda Bharati vs. State of Kerala (1973)	It held that the word "law" in Article 13(2) includes only the ordinary laws and not the amendment acts made under Article 368.

any ordinary law, these very principles of interpretation compel us to take into account the nature and scope of the Act we are interpreting—to remember that it is a Constitution, a mechanism under which laws are to be made, and not a mere Act which declares what the law is to be."

The Supreme Court has explained the doctrine of liberal interpretation in the following way[86]:

> "A constitutional provision is never static, it is ever evolving and ever changing and, therefore, does not admit of a narrow, pedantic or syllogistic approach. It seems well settled that constitutional provisions must receive a broad interpretation and the scope and ambit of such provisions, and in particular the Fundamental rights, should not be cut down by too astute or too restricted an approach".

With respect to the application of the doctrine of liberal interpretation to the entries enumerated in the legislative lists under the Seventh Schedule of the Constitution, the Supreme Court observed as follows[87]:

> "The cardinal rule of interpretation is that the entries in the legislative lists are not to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The widest possible construction, according to the ordinary meaning of the words in the entry, must be put upon them. In construing the words in a constitutional document conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

2. Doctrine of Literal Interpretation

The doctrine of literal interpretation is also known as the doctrine of strict construction or the doctrine of positivist construction. According to this doctrine, the provisions

[86] *Life Insurance Corporation of India* vs. *Manubhai D. Shah* (1992).

[87] *Elel Hotels and Investments Limited* vs. *Union of India* (1989).

of the constitution should be expounded in their plain, ordinary, natural and grammatical meaning.

While laying down the doctrine of literal interpretation, Justice Mukherjea said[88]: "In interpreting the provisions of our constitution, we should go by the plain words used by the constitution-makers".

The doctrine of literal interpretation says that the Constitution must be interpreted with reference to its terms and those alone; nothing is to be read into it on grounds of some supposed spirit pervading the Constitution, or on the ground of policy or even for the purpose of supplying omissions or of correcting errors[89].

The Supreme Court, in the above context, made the following observation[90]:

> "The courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. Where the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the Legislature, courts cannot declare a limitation upon the motion of having discovered something in the spirit of the Constitution which is not even mentioned in the statute. It is difficult upon any general principles to limit the omnipotence of the sovereign legislative power by judicial interpretation, except so far as the express words of a written Constitution give that authority."

3. Doctrine of Purposive Interpretation

The doctrine of purposive interpretation says that the courts, while making an interpretation of the Constitution, should look into the purpose for incorporating a provision in the Constitution. It emphasizes that the constitutional interpretation should ascertain the intention of the makers of the Constitution.

The Preamble to the Constitution and the Constituent Assembly Debates throws a light on the purposes of the constitutional provisions and the intent of the constitution-makers. Sir Alladi Krishnaswamy Ayyar, a member of the Drafting Committee of the Constituent Assembly said: "The Preamble to our Constitution expresses what we had thought or dreamt so long". Similarly, in the *Berubari Union* case[91] (1960), the Supreme Court said that the Preamble is a key to the minds of the makers of the Constitution.

While making an argument in favour of the doctrine of purposive interpretation, the Supreme Court made the following observation[92]:

> "Constitutional provisions are required to be understood and interpreted with an object-oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve."

Similarly, the former Chief Justice of India, J.S. Verma, while advocating the doctrine of purposive interpretation, said as follows[93]:

> "The Constitution is to be interpreted as a living and vibrant organism to provide for the current societal needs. Constitution is to be construed as enacting concepts. In construing a provision of the Constitution, the constitutional purpose it is meant to subserve has to be borne in mind."

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[88] *Chiranjit Lal Chowdhary* vs. *Union of India* (1950).

[89] In Presidential Reference to the Supreme Court with respect to the Sea Customs Act in 1963.

[90] *A.K. Gopalan* vs. *State of Madras* (1950).

[91] In Presidential Reference to the Supreme Court with respect to the Berubari Union and Exchange of Enclaves in 1960.

[92] *S.R. Chaudhuri* vs. *State of Punjab* (2001).

[93] J.S. Verma, New Dimensions of Justice, Universal, 2000, pp. 1–2.

4. Doctrine of Creative Interpretation

The doctrine of creative interpretation envisages an innovative judicial interpretation of the provisions of the Constitution. This doctrine says that the courts should evolve new concepts and new procedures in order to meet the requirements of the changing situations.

The judgement delivered by the Supreme Court in the *Golak Nath* case[94] (1967) is an important illustration of the doctrine of creative interpretation.

In this case, the Supreme Court embarked on a creative role by introducing for the first time in India the American doctrine of prospective overruling. According to this doctrine, an old precedent (stare decisis) can be overruled from a future date and not retrospectively.

While asserting a creative role for itself in the *Golak Nath* case[95] (1967), the Supreme Court made the following observation:

> "Articles 32, 141 and 142 are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice. To deny this power to the Supreme Court on the basis of some outmoded theory that the Court only finds the law but does not make it is to make ineffective the powerful instrument of justice placed in the hands of the highest judiciary of this country."

Another significant manifestation of the doctrine of creative interpretation is the judgement delivered by the Supreme Court in the *Kesavananda Bharati* case[96] (1973). In this case, the Supreme Court innovated a new constitutional doctrine called 'the doctrine of basic structure of the constitution'. In fact, this judgement is regarded as the water-mark of the judicial creativity in India.

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[94] *I.C. Golak Nath* vs. *State of Punjab* (1967).
[95] *Ibid.*
[96] *Kesavananda Bharati* vs. *State of Kerala* (1973).

PART XIII Comparison of the Constitutions

In this Part...

92. World Constitutions

CHAPTER 92 World Constitutions

AMERICAN CONSTITUTION

The American Constitution is the Constitution of the United States of America which was formed in 1787 following the American Revolution (1775–1783). The Constitution was adopted in 1787 at the Philadelphia Convention and came into force in 1789. The salient features of the American Constitution are explained as follows:

1. Written Constitution The American Constitution is usually cited as a classic example of a written Constitution. In fact, it is the oldest among the existing written Constitutions of the world. It is contained in a document of some 12 pages and consists of a Preamble, 7 Articles and 27 Amendments.

2. Rigid Constitution Unlike the British Constitution, the American Constitution is a rigid one. It cannot be amended by the Congress in the same manner as the ordinary laws are made. It can be amended by the Congress only by means of a special process provided by the Constitution for that purpose. Therefore, in the USA, there exists a distinction between a constitutional law and an ordinary law.

The American Constitution, the most rigid constitution in the world, lays down the following two methods for its amendment:

(i) An amendment can be proposed by two-third votes of both the Houses of the Congress. It should be ratified by the legislatures of three-fourths (38 out of 50) of the states within a seven-year time span.

(ii) Alternatively, an amendment can be proposed by a constitutional convention called by the Congress on the petition of two-thirds (34 out of 50) of the state legislatures. It should be ratified by the convention in three-fourths (38 out of 50) of state legislatures.

Hence, the procedure prescribed by the American Constitution for its amendment is very difficult, complicated and slow. Its rigid character is evident from the fact that it has been amended only 27 times since its promulgation in 1789.

3. Federal Constitution USA is a federal state. In fact, the USA is the first and the oldest federal state in the modern world. It is a federal republic comprising 50 states (originally 13 states) and the District of Columbia. The Constitution provides for division of powers between the Federal (Central) Government and the State Governments. It confers limited and specified powers on the Centre and vests the residuary powers (which are not enumerated in the Constitution) in the States. Each state has its own Constitution, elected legislature, governor and Supreme Court.

4. Presidential Government Unlike the British Constitution, the American Constitution provides

for the Presidential form of Government. The features of the American Presidential system of Government are as follows:

(i) The American President is both, the head of State and the head of Government. As the head of State, he/she occupies a ceremonial position. As the head of Government, he/she leads the executive organ of Government. The President of the USA is the chief real executive.

(ii) The President is elected by an electoral college for a fixed tenure of four years. He/she cannot be removed by the Congress except by impeachment for a grave unconstitutional act.

(iii) The President governs with the help of the Cabinet or a smaller body called 'Kitchen' Cabinet. It is only an advisory body and consists of non-elected departmental secretaries. They are selected and appointed by him/her and are responsible only to him/her. They can also be removed by him/her any time.

(iv) The President and his/her Secretaries are not responsible to the Congress for their acts. They neither possess membership in the Congress nor attend its sessions.

(v) The President cannot dissolve the House of Representatives – the lower House of the Congress.

5. Separation of Powers The doctrine of separation of powers is the basis of the American constitutional system. The legislative, executive and judicial powers of the Government are separated and vested in the three independent organs of the Government. The first three articles of the Constitution clearly manifest this feature of the Constitution. Article I says that all legislative powers herein granted shall be vested in the Congress. Article II states that the executive powers shall be vested in the President. Article III provides that the judicial powers shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.

6. Checks and Balances The system of checks and balances in the American Constitution is an outcome of the adoption of the principle of separation of powers. It enables each organ of the Government to exercise partial control on others so that no organ becomes autocratic and irresponsible. This means that no organ of Government has unrestricted powers even in its own sphere.

Some aspects of the working of the system of checks and balances in the American Constitutional system are:

(i) The President can veto the bills passed by the Congress. He/she enjoys two kinds of vetos—Pocket veto and Qualified veto.

(ii) The Senate confirms the higher appointments made and international treaties concluded by the President.

(iii) The Congress determines the organisation and appellate jurisdiction of the judiciary.

(iv) The President appoints the judges with the consent of the Senate.

(v) The Supreme Court can declare the congressional laws and Presidential orders as *ultra vires.*

7. Supremacy of Constitution and Judicial Review The American Constitution embodies the principle of 'hierarchy of laws'. The written Constitution is regarded as the highest (supreme or fundamental) law of the land. The statutes of the Congress and state legislatures must conform to this supreme law. If these statutes are against the provisions of the Constitution, they can be declared by the Supreme Court as *ultra vires* and hence, null and void. The Supreme Court thus acts as the custodian of the Constitution through its power of judicial review.

8. Bill of Rights The American Constitution is the first Constitution in the world to carry the Bill of Rights. It guarantees a large number of rights to the people. It says that no person is to be deprived of life, liberty and property without due process of law. These rights impose restrictions on the authority of the Government. The Supreme Court acts as the protector of these rights through its power of

judicial review. This Bill of Rights was added to the original Constitution in 1791 through the first ten amendments.

9. Bicameralism The American Federal Legislature called the Congress is bicameral, that is, it consists of two Houses, namely the Senate and the House of Representatives. The Senate is the upper House while the House of Representatives is the lower House. The Senate consists of 100 members, two being elected from each state to serve for a fixed six-year term. The House of Representatives consists of 435 members elected from single member constituencies to serve for a fixed two-year term. The Senate is the more powerful chamber of the Congress. In fact, the American Senate is the most powerful second chamber (upper House) in the world.

AMERICAN PRESIDENT

Mode of Election The American Constitution provides for an indirect election of the President. However, the growth of political parties and political conventions has converted it into a direct election.

Constitutionally, the President is elected by an electoral college constituted for the purpose. The members of this college (called as Presidential Electors) are elected directly by the people of all the states. The number of Presidential electors in each state is equal to the number of its members in the Congress (both in the House of Representatives and in the Senate). It means that the electoral college consists of as many members as is the total strength of the two Houses of the Congress. Additionally, three votes have been given to the District of Columbia, a federal enclave and not a state. Thus, the total strength of the electoral college is 538 (435 is the strength of the House of Representatives, 100 is the strength of the Senate and three members of the District of Columbia). A candidate in order to win the Presidential election needs 270 votes, that is, 269 (half of the total votes of 538) plus one.

It must be stressed here that the members of the electoral college are not the members of the Congress. The college is a special body which is formed only for electing the President and it gets dissolved after this.

If no candidate secures the requisite majority, the House of Representatives elects the President from among the three candidates securing the highest votes in the electoral college. There have been three such occasions (1800, 1824 and 1876).

Qualifications, Term and Removal According to the Constitution, a candidate for the presidency must have the following three qualifications:

(i) He/she must be a natural born citizen of the USA. A naturalised citizen is not eligible.

(ii) He/she must have attained the age of thirty-five years.

(iii) He/she must have been a resident of the USA for fourteen years (not necessarily consecutive).

The President holds the office for a fixed tenure of four years. He/she is eligible for re-election but only once. The 22nd Amendment Act of 1951 has fixed the maximum total term for any President at ten years. In other words, it bars any person from being elected as President more than twice. The Presidential term of four years begins on 20th January.

The President may be removed from the office before the expiry of his/her normal tenure of four years through impeachment for treason, bribery or other high crimes and misdemeanors. The House of Representatives initiates the impeachment proceedings by a majority vote. The case is then tried by the Senate. During this trial period, the Senate acts as a judicial tribunal and is presided over by the chief justice of the Supreme Court (and not the vice-President). If the Senate also passes the impeachment resolution by a two-thirds majority, the President stands impeached. So far, no American President has ever been removed by impeachment. However, there have been five impeachment

attempts – Andrew Johnson (1868), Richard Nixon (1974), Bill Clinton (1998), Donald Trump (first time in 2019) and Donald Trump (second time in 2021).

Powers and Functions The American presidency is one of the strongest democratic offices in the world. Lord Bryce regards it as 'the greatest office in the world'. Munro observed, "the American President exercises the largest amount of authority ever wielded by any man in a democracy". Ogg regards him/her as "the greatest ruler of the world". Harold Laski remarked, "the President of the United States is both more and less than a King, he/she is also both more and less than a Prime Minister".

The President derives his/her powers and functions from four sources: Constitution, statutes of Congress, judicial interpretations and political conventions. These are mentioned below:

1. He/she has to enforce the Constitution, federal laws and treaties, and judicial decisions throughout the country.
2. He/she is the supreme commander of the armed forces of the US.
3. He/she appoints the Supreme Court judges, ambassadors, heads of executive departments, diplomatic officials, consuls and other top officials.
4. He/she formulates foreign policy and conducts foreign affairs of the US.
5. He/she can grant pardon and reprive for offences against federal laws (except in cases of impeachment).
6. When a bill approved by both the Houses of the Congress is sent to him/her for his/her assent, he/she has three options before him/her:
   (i) He/she may give his/her assent to the bill and the bill then becomes an Act.
   (ii) He/she may reject the bill and return it to the Congress within ten days. However, if the same bill is re-passed by the Congress by a two-thirds majority, then the bill becomes a law and the President has to sign it. This is known as 'Qualified Veto'.
   (iii) He/she may reserve the bill with him. Then, the bill becomes a law after the expiry of ten days without his/her assent. However, if the Congress ends the session before ten days, then the bill automatically dies. This is known as 'Pocket Veto'.
7. He/she can send messages to the Congress proposing some legislative measures; either orally delivered to the House or sent in the form of a document.
8. He/she can call special sessions of the Congress for consideration of urgent matters.
9. He/she prepares the national budget and submits it to the Congress for approval.
10. He/she is empowered to make rules and regulations in the form of executive orders. This is known as delegated legislation.
11. He/she is empowered to adjourn the Congress, when there is a disagreement between two houses on the date of adjournment.

BRITISH CONSTITUTION

The British Constitution is the Constitution of the United Kingdom of Great Britain and Northern Ireland. Great Britain consists of England, Wales and Scotland. England and Wales were united in 1535 and Scotland joined them to form the state of Great Britain in 1707, while the United Kingdom of Great Britain and Northern Ireland was formed in 1921.

The British constitutional system is the oldest in the world and is also the oldest democratic system. In fact, the British Constitution is the 'mother of Constitutions'. The principles and institutions of representative Government were first developed in Britain.

The British Constitution is a blend of monarchy, aristocracy and democracy. The salient features of the British Constitution are explained as follows:

1. Unwritten Constitution Unlike the American Constitution, the British Constitution is unwritten. In the UK, most of the principles governing the distribution and exercise of the

governmental powers are not written. Only a small portion of the British Constitution is covered by written documents. The British Constitution is an evolved Constitution, not an enacted one. It is a product of history and a result of evolution. It is a child of chance (accident) as well as wisdom (design). It is not a static Constitution but a remarkably dynamic one. Hence, L.S. Amery in his book *Thoughts on the Constitution* says that the British Constitution is 'a blend of formal law, precedent and tradition'.

The various elements or sources of the British Constitution are explained as follows:

(i) **Conventions:** Conventions constitute a major element of the British Constitution. These are the unwritten principles of political practices and customary principles of constitutional behaviour which have developed in the course of time. J.S. Mill described them as the 'Unwritten maxims of the Constitution'. However, unlike the laws, they are not recognised and enforced by judicial courts. But they play a very significant role in the actual working of the British political institutions. They are generally observed as they are backed by tradition and public opinion. The well-known conventions in Britain are:
   (a) The King or Queen should exercise his/her legal powers on the advise of the Cabinet headed by the Prime Minister.
   (b) The King or Queen should appoint the leader of the majority party in the House of Commons as the Prime Minister.
   (c) The King or Queen should dissolve the lower House of Parliament on the advise of the Prime Minister.
   (d) The King or Queen should give his/her assent to all the Bills passed by the Parliament.
   (e) The Cabinet is collectively responsible to the House of Commons.

(ii) **Great Charters:** These are also called constitutional charters or constitutional landmarks. They are historical documents which define the powers of the Crown and liberties of the citizens, and so on. They have a significant bearing on some of the basic aspects of the British Constitution. The important among such charters are the Magna Carta (1215), the Petition of Rights (1628), the Bill of Rights (1689), and others.

(iii) **Statutes:** These are the laws made by the British Parliament from time to time. They define and regulate the principles, structures and functions of many British political institutions. The important statutes in Britain are the Habeas Corpus Act, 1679, the Statute of Westminster, 1931, Ministers of the Crown Act, 1937, the People's Representation Act, 1948, and others.

(iv) **Common Law:** It is a body of judge-made laws. It has defined some of the significant rules and principles pertaining to the powers of the Government and its relationship with the citizens. They are accepted and enforced by judicial courts. Dr. Ogg defines common law as 'the vast body of legal precept and usage, which through the centuries has acquired binding and almost immutable character'.

(v) **Legal Commentaries:** These are the commentaries or text books written on the constitutional law of the country by the constitutional experts. They provide insight into the working of the British political institutions. They clarify the meaning and fix the scope of certain constitutional principles. Some of the popular legal commentaries on the British Constitution, are A.V. Dicey's 'Law of the Constitution', Bagehot's 'English Constitution', Blackstone's 'Commentaries on the Laws of England', and others.

2. Flexible Constitution Unlike the American Constitution, the British Constitution is flexible in nature. It requires no special procedure for its amendment. It can be amended by the Parliament in the same manner as the ordinary laws are made. Thus, in Great Britain, there

exists no distinction between the constitutional law and the ordinary law.

3. Unitary Constitution Great Britain is a unitary state. Hence, all the powers of the Government are vested in a single supreme Central Government. The local governments are created only for administrative convenience and they work under the complete control of the Central Government located at London. They derive their authority from the Central Government which can also abolish them altogether at any time.

4. Parliamentary Government The British Constitution provides for parliamentary form of Government in which the executive hails from the legislature and remains responsible to it. The features of the British Parliamentary system of Government are as follows:

(i) The King or Queen is the nominal executive while the Cabinet is the real executive. The King or Queen is head of the State while the Prime Minister is head of the Government.

(ii) The party which secures majority seats in the House of Commons, forms the government. The leader of that party is appointed as the Prime Minister by the King/Queen.

(iii) The Ministers are individually as well as collectively responsible to the House of Commons for their acts. They remain in office so long as they enjoy the majority support in the House.

(iv) The King or Queen can dissolve the House of Commons on the advise of the Prime Minister.

(v) The Ministers (members of the executive) are also the members of the British Parliament. This avoids conflicts between the executive and the legislature and facilitates better coordination between them.

5. Sovereignty of Parliament Sovereignty means the supreme power within the State. That supreme power in Great Britain lies with the Parliament. Hence, sovereignty of Parliament (or supremacy of Parliament) is a cardinal principle of the British constitutional law and political system. This principle implies the following things:

(i) The British Parliament can make, amend, substitute or repeal any law. De Lolme said, 'The British Parliament can do everything except make a woman a man and a man a woman'.

(ii) The Parliament can make constitutional laws by the same procedure as ordinary laws. In other words, there is no legal distinction between the constituent authority and the law-making authority of the British Parliament.

(iii) The parliamentary laws cannot be declared invalid by the judiciary as being unconstitutional. In other words, there is no system of judicial review in Great Britain.

6. Rule of Law The doctrine of rule of law is one of the fundamental characteristics of the British constitutional system. It lays down that the law is supreme and hence the Government must act according to law and within the limits of the law. A.V. Dicey in his book *The Law of the Constitution* (1885), has given the following three implications of the doctrine of rule of law:

(i) Absence of arbitrary power, that is no man can be punished except for a breach of law.

(ii) Equality before the law, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts.

(iii) The primacy of the rights of the individual, that is the Constitution is the result of the rights of individual as defined and enforced by the courts of law, rather than the Constitution being the source of the individual rights. The rights of the citizens of Great Britain flow from judicial decisions, not from the Constitution.

7. Constitutional Monarchy Great Britain is a monarchical state. It is described as a limited hereditary monarchy. The hereditary monarch (King or Queen) is the head of the state. The Crown is the visible symbol of the supreme

executive power. However, the King or Queen only reigns, but does not rule. These powers are actually execised by the Cabinet headed by the Prime Minister. The Cabinet is collectively responsible to the Parliament for its actions and ultimately to the electorate. Hence, what Great Britain has is a 'constitutional monarchy'.

The distinction between the Crown and the King is the distinction between the monarchy as an institution and the monarch as a person. In other words, the King is a person whereas the Crown is an institution (i.e. the institution of kingship). The King is mortal whereas the Crown is immortal. This is clearly expressed by the popular statement in Great Britain that 'the King is dead; long live the King'. It means that the person who occupied the throne is dead but the institution of kingship survives.

8. Bicameralism The British Parliament is bicameral, that is, it consists of two houses, namely the House of Lords and the House of Commons.

The House of Lords is the upper House. It is the oldest second chamber in the world. It consist of lords, peers and nobles and hence, represent the aristocratic element of the British political system. At present it has 677 appointed members who fall into four distinct groups. It is mostly a hereditary body.

The House of Commons is the lower House but more important and powerful than the House of Lords. It is the oldest popular legislative body in the world. It consists of the representatives elected by the people on the basis of universal adult franchise. There are at present 659 seats in the House of Commons and these are distributed among England, Wales, Scotland and Northern Ireland.

BRITISH CABINET

Composition As the British Constitution provides for parliamentary system of government, the Cabinet acts as the real executive authority. It consists of the Prime Minister as its head and twenty or so of his/her most senior ministerial colleagues. It includes the following:

1. Prime Minister and First Lord of the Treasury and Minister for the Civil Service
2. Chancellor of the Exchequer
3. Lord Privy Seal
4. Chancellor of the Duchy of Lancaster
5. Lord President of the Council
6. President of the Board of Trade
7. Lord Chancellor
8. First Lord of Admiralty
9. Post Master General
10. Secretaries of State for Home, Foreign, Defence, Social Services, Environment and Education and Science
11. Ministers of Agriculture and Fisheries, Health, Pension, Transport and Labour
12. Secretary of State of Scotland
13. Secretary of State for Wales

It must be mentioned here that the Attorney-General, Solicitor-General, Lord Advocate and Paymaster-General are not members of the British Cabinet.

Privy Council There is a close relationship between the Cabinet and the Privy Council. This council, in its present form, came into existence in the fifteenth century as an advisory body to the British monarch. In the course of time, most of its powers were transferred to the cabinet as its inner committee. Presently, it consists of 330 members and includes, *inter alia*, all cabinet ministers (past and present). It is presided over by the Lord President of the Council.

Prime Ministerial Government In the past, the British Constitutional and political experts had described the relationship between the Prime Minister and the Cabinet as '*Primus inter pares*' (first among equals). In the recent period, the Prime Minister's power, influence and position have increased significantly *vis-a-vis* the cabinet. He/she has come to play a 'dominant' role in the British Politico-administrative system. Hence, the later political analysts, like Crossman, Mackintosh and others have described the British Cabinet Government as 'Prime Ministerial Government'.

Shadow Cabinet It is a unique institution of the British Cabinet system. It is formed by the opposition party to balance the ruling cabinet and to prepare its members for future

ministerial office. In Britain, the opposition enjoys an official recognition and is as well organised as the government. It runs a 'Parallel' government with its shadow cabinet. In this shadow cabinet, almost every member in the ruling cabinet is 'shadowed' by a corresponding member in the opposition cabinet. The members of the shadow cabinet watch critically the working of the departments assigned to them. They match the cabinet ministers in the parliamentary debates. The shadow cabinet serves as the 'alternative cabinet' if there is change of government. That is why Ivor Jennings described the leader of opposition as the 'alternative' Prime Minister. He/she enjoys the status of a Minister and is paid by the government.

FRENCH CONSTITUTION

The French Revolution (1789–1799) had a significant impact on the growth of the French constitutional system. Since the revolution, France has changed its Constitution on an average after every 12 years. It adopted three monarchic, two dictatorial, three imperial and four republican Constitutions. The present French Constitution, which established the Fifth Republic, came into force in 1958. It was prepared under the instructions of General de Gaulle. It was designed to give France a strong and stable Government.

The salient features of the Constitution of the Fifth French Republic are as follows:

1. Written Constitution Like the American Constitution, the French Constitution is a written Constitution. Originally, it contained a Preamble and 92 Articles divided into 15 chapters. It declares 'Liberty, Equality and Fraternity' as the motto of the Fifth Republic. It states, "France is an indivisible, secular, democratic and social republic". The chapters of the Constitution are mentioned in Table 92.1.

Table 92.1 French Constitution at a Glance (As Amended till now)

Chapter Number	Chapter Heading	Articles Covered
–	Preamble	1
I	Sovereignty	2 to 4
II	The President of the Republic	5 to 19
III	The Government	20 to 23
IV	Parliament	24 to 33
V	Relations between Parliament and Government	34 to 51-2
VI	Treaties and International Agreements	52 to 55
VII	The Constitutional Council	56 to 63
VIII	The Judicial Authority	64 to 66-1
IX	The High Court	67 to 68
X	The Criminal Liability of the Government	68-1 to 68-3
XI	The Economic, Social and Environmental Council	69 to 71
XI-A	The Defender of Rights	71-1
XII	Territorial Communities	72 to 75-1
XIII	Transitional Provisions Pertaining to New Caledonia	76 to 77
XIV	On the French-Speaking World and Association Agreements	87 to 88*
XV	On the European Union	88-1 to 88-7
XVI	On Amendments to the Constitution	89
XVII	(Repealed)	–

*Articles 78 to 86 were repealed.

2. Rigid Constitution Unlike the British Constitution, the French Constitution is rigid in nature. It contains a special procedure for its amendment. It can be amended by the Parliament by 60 per cent majority vote in both the houses. Alternatively, the President can call a national referendum on constitutional amendment. However, the republican form of government in France is not subject to amendment. Thus, there is no place for monarchy in France.

3. Unitary Constitution France is a unitary state. There is no division of powers between the central and local governments. All powers are vested in the single supreme Central Government located in Paris. The local governments are created and abolished by the Central Government for administrative convenience. In fact, France is more unitary than Britain.

4. Quasi-Presidential and Quasi-Parliamentary The French Constitution provides neither Presidential nor parliamentary government. Rather, it combines the elements of both. On one hand, it provides for a powerful President who is directly elected by the people for a five-year term, on the other, there is a nominated council of ministers headed by the Prime Minister which is responsible to the Parliament. However, the ministers shall not be the members of the Parliament.

Over a period of time, the provisions of the Constitution relating to the mode of election, tenure of office and number of terms of the President of France have been amended. These are mentioned in Table 92.2.

5. Bicameralism The French Parliament comprises the National Assembly (the lower house) and the Senate (upper house). The National Assembly has 577 members who are directly elected for a five-year term. The Senate has 348 members who are indirectly elected for a six-year term. The National Assembly is more dominant and powerful than the Senate.

6. Rationalised Parliament The Constitution of France established a rationalised Parliament, that is, a Parliament with restricted and limited powers. The powers of the French Parliament are restricted *vis-a-vis* the political executive. It can make laws only on those items which are defined in the Constitution. On all other matters, the government is empowered to legislate by executive decree. The Parliament can also delegate law-making power to the executive branch. These limitations on parliamentary authority were imposed to provide for a strong executive.

7. Constitutional Council France has a Constitutional Council. It consists of nine members who are appointed for a term of nine years. It functions as a judicial watchdog and ensures that the executive decrees and parliamentary laws conform to the provisions of the Constitution. However, it is only an advisory body and its opinion is not binding.

8. Recognition of Political Parties The Constitution of France gives recognition to political parties and their role. It is for the first time in France that a Republican Constitution not only mention parties but also acknowledges them as a normal part of political life. The Constitution states that the "parties must respect the principles of national sovereignty and democracy".

Table 92.2 Amended Provisions of the Constitution Relating to the French President

Sl. No.	Elements	Original Provisions	Amended Provisions (year)
1.	Mode of election	Indirect election	Direct election (1962)
2.	Tenure of office	Seven years	Five years (2000)
3.	Number of terms allowed	No limit on the number of terms	Not more than two consecutive terms (2008)

FRENCH PRESIDENT

Mode of Election Originally, the Constitution provided for an indirect election of the President. He/she was to be elected by an electoral college consisting of three types of members – (i) national representatives (members of two Houses of Parliament); (ii) representatives of the local authorities and (iii) representatives of the overseas territories. However, in 1962, the Constitution was amended through a referendum.

The President is now directly elected by universal suffrage. In order to win the election, a candidate has to obtain an absolute majority of the votes cast. In case no candidate obtains the requisite majority in the first ballot, then a second ballot is held. Only the two candidates who have received the highest number of votes in the first ballot may stand in the second ballot.

Tenure and Removal The President is elected for a term of five years. He/she is eligible for re-election; but for another consecutive term only. Moreover, the Constitution has not prescribed any qualifications (including the minimum age limit) for the Presidential office.

If the presidency falls vacant, the functions of the President (except submitting a bill to a referendum and dissolution of the National Assembly) are performed temporarily by the President of the Senate and if he/she is also not in a position, the functions are performed by the government.

The President can be removed from the office before the expiry of his/her normal tenure of five years through an impeachment for high treason. The impeachment resolution should be passed by both the Houses of Parliament by an absolute majority. After this indictment by the Parliament, the President is tried by the High Court of Justice.

Powers and Functions The President is the pivot of the Constitution and occupies a dominant position in the system of government. He/she is the real head of the state, the leader of the nation and the symbol of national unity. His/her powers and functions are as follows:

1. He/she appoints the Prime Minister and accepts his/her resignation.
2. He/she appoints and dismisses the other members of the government (Council of Ministers) on the advice of the Prime Minister.
3. He/she presides over the meetings of Council of Ministers. This provides him/her a direct opportunity to influence, guide, direct and control the policies of the government.
4. He/she makes appointments to civil and military posts of the state.
5. He/she is the commander-in-chief of the armed forces of the country.
6. He/she negotiates and ratifies treaties and sends and receives diplomats.
7. He/she is kept informed of all the negotiations leading to the conclusion of an international agreement not subject to ratification.
8. He/she presides over the higher councils and committees of national defence.
9. He/she presides over and represents the French community.
10. He/she appoints the President and three members of the Constitutional Council.
11. He/she promulgates the laws within fifteen days following their final adoption by the Parliament and transmission to the government. However, before the end of this period, he/she can ask the Parliament to reconsider a law. This reconsideration cannot be refused by the Parliament.
12. He/she can send messages to the Parliament and summon its special sessions.
13. He/she can submit to a referendum any government bill on the proposal of the government during the parliamentary sessions or on the joint proposal of the two Houses of the Parliament. If the bill is approved in the referendum, the President should promulgate it within fifteen days.
14. He/she signs the ordinances and decrees that have been considered by the Council of Ministers.

15. He/she has the right to pardon.
16. He/she presides over the Higher Council of the judiciary. He/she also appoints nine members to it.
17. He/she is the protector of the independence of the judicial authority.
18. He/she is vested with special powers to deal with emergencies. During this period, he/she can take the required measures after consulting the Prime Minister, the Presidents of the two Assemblies (Houses) of the Parliament and the Constitutional Council.
19. He/she can dissolve the National Assembly, after consulting the Prime Minister and the Presidents of the two Assemblies (Houses of the Parliament). The Constitution, however, imposes two limitations: (i) He/she cannot dissolve the National Assembly more than once in twelve months and (ii) the National Assembly cannot be dissolved during an emergency. Notably, the President is not required to follow the advice of the prime minister and the Presidents of the two Assemblies. Further, the President can refuse dissolution when asked by the prime minister.

JAPANESE CONSTITUTION

The modern state of Japan came into existence with the Meiji Restoration in 1868. The Meiji Constitution remained in force for 58 years (from 1889 to 1947). This Constitution was based on the ideals of autocracy, authoritarianism and monarchy.

After the Second World War (1939–1945), Japan was placed under Allied Occupation from 1945 to 1952. The U.S. General Douglas MacArthur was the Supreme Commander of the Allied Powers in Japan. Under his direction, Japan adopted a new democratic Constitution in 1946. This Constitution is based on the ideals of democracy and peace, as conceived by the Occupation Authorities.

The new and the present Constitution of Japan became operative in 1947. It came to be known both as the MacArthur Constitution as well as the Showa Constitution. Showa is the title of the reign of Emperor Hirohito and means 'Radiant Peace'. At the time of adoption of the new Constitution, Hirohito was the Emperor and Shidehara was the Prime Minister of Japan.

The salient features of the present Constitution of Japan are as follows:

1. Written Constitution Like the American Constitution, the Japanese Constitution is a written Constitution. It contains a Preamble and 103 Articles divided into 11 chapters. It is a unique blend of the American and the British system. The Preamble emphasises the principle of the sovereignty of the people. The chapters of the Constitution are mentioned in Table 92.3.

2. Rigid Constitution Like the American Constitution, the Japanese Constitution is a rigid one. It cannot be amended by the Diet (Japanese Parliament) in the same manner as the ordinary laws are made. It can be amended only by means of a special process provided by the Constitution for that purpose. Hence, in Japan, there exists a distinction between a constitutional law and an ordinary law.

The Japanese Constitution lays down the following procedure for its amendment:

(i) The amendment shall be initiated by the Diet. Such a proposal must be passed by a majority of two-thirds of its membership.
(ii) After that, it is submitted to the people for ratification at a special referendum or a specific election. It must be approved by the majority of the people.
(iii) Amendment when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of the Constitution.

It must be mentioned here that the Japanese Constitution has not so far been amended even once. Thus, the Constitution reads today as it did in 1947.

3. Unitary Constitution Like the British Constitution, the Japanese constitution provides for a unitary state. There is no division of powers between the Central and provincial

Table 92.3 Japanese Constitution at a Glance

Chapter Number	Chapter Heading	Articles Covered
I	The Emperor	1 to 8
II	Renunciation of War	9
III	Rights and Duties of the People	10 to 40
IV	The Diet	41 to 64
V	The Cabinet	65 to 75
VI	Judiciary	76 to 82
VII	Finance	83 to 91
VIII	Local Self-government	92 to 95
IX	Amendments	96
X	Supreme Law	97 to 99
XI	Supplementary Provisions	100 to 103

Governments. All powers are vested in the single supreme Central Government located at Tokyo. The provinces derive their authority from the Central Government. The Diet can expand or diminish the authority and jurisdiction of the provinces. Thus, the provinces are subordinate units of Government and enjoy only those powers which are delegated to them by the supreme Central Government.

4. Parliamentary Government Japan has shown a preference for the British Parliamentary System rather than the American Presidential System of Government. The features of the Japanese Parliamentary system of Government are as follows:

(i) The Emperor is the nominal executive while the Cabinet is the real executive. The Cabinet consists of the Prime Minister as its head and twenty Ministers of State. The Emperor is the head of the State while the Prime Minister is head of the Government.

(ii) The party which secures majority seats in the House of Representatives forms the Government. The leader of the majority party or majority coalition invariably becomes the Prime Minister.

(iii) The Prime Minister is designated from among the members of the Diet by a resolution of the Diet. The Emperor appoints the Prime Minister as designated by the Diet.

(iv) The Prime Minister appoints the Ministers of State. But, a majority of them should be chosen from among the members of the Diet.

(v) The Prime Minister can remove the Ministers of State as he/she chooses.

(vi) The Cabinet, in the exercise of the executive power, is collectively responsible to the Diet. It must resign when the House of Representatives passes a no-confidence resolution.

(vii) The Emperor can dissolve the House of Representatives on the advice of the Prime Minister.

An analysis of the above points makes it clear that Japan (though adopted the British Parliamentary pattern) differed from Britain in the following four respects:

1. In Britain, the Prime Minister is chosen as well as appointed by the King/Queen, while in Japan, the Prime Minister is chosen by the Diet but appointed by the Emperor.

2. In Britain, the Ministers are appointed by the King/Queen, while in Japan, the Ministers are appointed by the Prime Minister.
3. In Britain, the Prime Minister cannot remove the Ministers, while in Japan, the Prime Minister can remove the Ministers at his/her will.
4. In Britain, all the Ministers must be members of the Parliament, while in Japan, only a majority of the Ministers must be members of the Diet.

5. Constitutional Monarchy Japan is a monarchical state. It is described as a limited hereditary monarchy. The Constitution, though it preserves the institution of the Emperor, it deprives him/her of all powers, privileges and prerogatives he/she formerly exercised and enjoyed. It makes the following provisions with regard to the institution of the Emperor:

(i) The Emperor is the symbol of the state and of the unity of the people. He/she derives his/her position from the will of the people with whom resides sovereign power. Thus, the sovereignity of the Emperor is absolished.
(ii) The Imperial Throne is dynastic and succeeded to in accordance with the law passed by the Diet.
(iii) The advice and approval of the Cabinet is required for all acts of the Emperor.
(iv) The Emperor performs only those acts which are enumerated in the Constitution and he/she has no powers related to Government.
(v) The Emperor can neither give nor receive imperial property without the authorisation of the Diet.

Thus, the Constitution has made the Emperor merely a constitutional head. His/her authority is strictly limited to ceremonial functions of a constitutional monarch. Like his/her British counterpart, he/she only reigns and does not rule.

6. Supremacy of Constitution and Judicial Review The Japanese Constitution establishes the principle of supremacy of Constitution. The Constitution is regarded as the supreme (highest or fundamental) law of the land. The laws, ordinances, imperial rescript and official acts must conform to this supreme law. If these are against the provisions of the Constitution, they can be declared by the Supreme Court as ultra-vires and hence, null and void.

Thus, the American principle of judicial review is adopted in Japan. But there is a difference. The American Supreme Court does not derive its power of judicial review from the Constitution, whereas the Japanese Supreme Court derives its power of judicial review directly from the Constitution. The Japanese Constitution specifically says that the Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation, or official Act.

7. Fundamental Rights The Japanese Constitution provides for rights on the model of the Bill of Rights in the USA. It guarantees a large number of civil, political and economic rights to the people of Japan and declares them as 'eternal and inviolate'. The judiciary headed by the Supreme Court acts as the protector of these rights through its power of judicial review.

The rights provided by the Japanese Constitution are more elaborate and definite than the American Bill of Rights. Out of a total of 103 Articles in the Constitution, 31 Articles (10 to 40) are devoted to the rights and duties of the people. The rights provided for in the Constitution are:

(i) Right to equality
(ii) Right to freedom
(iii) Right to freedom of religion
(iv) Right to private property
(v) Economic rights
(vi) Right to education
(vii) Cultural rights
(viii) Right to constitutional remedies

8. Renunciation of War The Japanese Constitution renounces war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. It prohibits Japan from maintaining land, sea, and air forces, as well as other war potential. It also does not recognise the right of belligerency of the state.

Japan is the only modern state which has constitutionally renounced war forever. It is the most peculiar as well as the most controversial feature of the Japanese Constitution. This provision was got inserted into the Constitution by General MacArthur to see that Japan would never again be allowed to act as a military nation as it did during the period of 1931 to 1945 and to abolish forever the power of Japan as a rival to the US in the far east. However, it does not mean that Japan cannot use arms and other forces for its security and defence. Like any other modern state, Japan has its defence capabilities but the term used is 'self-defence forces' to look constitutionally correct. They are justified on the ground that every state has an inherent right to defend itself against foreign aggression.

9. Bicameralism The Japanese Diet is bicameral, that is, it consists of two houses, namely the House of Councillors (upper House) and the House of Representatives (lower House). The House of Councillors consists of 252 members elected for a term of six years. Out of the total 252 members, 152 are elected on a geographical basis (local constituencies) and the remaining 100 are elected by the nation at large (national constituency). The House of Representatives consists of 512 members elected for a term of four years. The House of Representatives has more powers than the House of Councillors, especially in financial matters.

Constitutionally, the Diet is the highest organ of state power and is the sole law-making organ of the state.

SOVIET CONSTITUTION

The state of the USSR, also called as the Soviet Union, was formed in 1917 following the Russian Revolution (Bolshevik Revolution) led by the charismatic V.I. Lenin. After being a Super Power for more than 70 years, the USSR finally collapsed and disintegrated in 1989–1991 mainly due to economic crisis.

The Russian Revolution of October 1917 created, for the first time ever a socialist state whose goal was Communism. Hence, the Soviet Constitution was the first socialist Constitution of the world. Since its formation in 1917, the USSR adopted four Constitutions, that is, in 1918, 1924, 1936 (Stalin Constitution) and 1977 (Brezhnev Constitution).

The constitutional system of the USSR was based on the principles and ideologies of Marxism– Leninism. Thus, the Communist Party dominated the entire political and administrative system of the USSR. It was in this respect that the politico-administrative system of the USSR was different from that of the UK, USA and France.

The salient features of the Soviet Constitution of 1977 are explained as follows:

1. Written Constitution Like American and French Constitutions, the Soviet Constitution was also a written one. It was drafted by a committee headed by Mr. Brezhnev. It had 20 Chapters and 174 Articles divided into 9 parts.

2. Rigid Constitution The Soviet Constitution was rigid in nature. It provided for a special procedure for its amendment. It could be amended by the legislature of the USSR (Supreme Soviet) by a two-third majority in each House.

3. Socialist Constitution The Constitution was socialistic in nature and laid down the foundation of a socialist state. It stated that 'the Union of Soviet Socialist Republics is a socialist state of the whole people, expressing the will and interests of the workers, peasants and intelligentsia, the working people of all the nations and nationalities of the country'. It also stated that 'the foundation of the economic system of the USSR is socialist ownership of the means of production in the form of state property (belonging to all the people) and collective farm and cooperative property'.

4. Federal Constitution The Constitution provided for a federal state consisting of 15 units called Union Republics. These units of the Soviet Federation were Russia, Ukraine, Byelorussia, Uzbekistan, Kazakhstan, Georgia, Azerbaijan, Lithuania, Moldavia, Latvia,

Kyrgyzstan, Tajikistan, Armenia, Turkmenistan and Estonia. The powers were divided between the Centre and the units. The powers of the Centre were enumerated while the residuary powers were given to the units as in the case of the USA. These 15 Union Republics had their own separate Constitutions conforming to the Constitution of the USSR and enjoyed the right to secede from the USSR.

Within several Union Republics existed autonomous republics (20), autonomous regions (8) and autonomous areas (10). They were vested with a certain amount of autonomy. Hence, the Union Republics were called sub-federations within the Soviet Federation and the USSR was called a 'Federation of Federations'.

5. Parliamentary Government The Constitution provided for a parliamentary form of Government in the USSR. The Council of Ministers was elected by the Supreme Soviet (legislature of the USSR) and remained responsible to it for its policies and acts. The Supreme Soviet could also remove the Ministers from their offices. The Constitution stated that 'the Council of Ministers headed by the Premier is the highest executive and administrative authority of the USSR'.

6. Bicameralism The Constitution provided for a bicameral legislature for the USSR. Thus, the Supreme Soviet consisted of the Soviet of the Union (lower House) and the Soviet of the Nationalities (upper House). Both the houses had equal number of members (i.e. 750 in each) elected directly every five years. The lower House represented the nation as a whole while the upper House represented the units of the Soviet Federation. The two Houses had equal and coordinated powers in all policy matters.

7. Presidium The Supreme Soviet, constitutionally the highest body of state authority of the USSR, elected a governing body known as the Presidium. The Constitution termed it as the Standing Committee of the Supreme Soviet. It was a 39-member body consisting of a Chairman, First Vice-Chairman, 15 Vice Chairmen (i.e. the heads of the 15 Union Republics), a Secretary and 21 members. The Chairman (President) of the Presidium was the formal head of the State of the USSR. It functioned as a collective presidency of the USSR. Hence it was called the 'Collegial Executive' or the 'Plural Executive' or the 'Collegiate President' of the USSR. It combined executive, legislative, diplomatic, military and judicial functions. Because of its multifarious functions and the plural character, the Presidium of the Supreme Soviet of the USSR has been described as the '20th Century Innovation.' This type of institution was not provided by any other Constitution of the world.

8. One-Party Dictatorship The most important feature of the constitutional system of the USSR was the monopoly of the political power enjoyed by the Communist Party of the Soviet Union (CPSU). The Soviet Constitution stated, 'the leading and guiding force of Soviet Society and the nucleus of its political system, of all state organisations and public organisations is the Communist Party of the Soviet Union. The CPSU exists for the people and serves the people. The Communist Party, armed with Marxism-Leninism, determines the general perspectives of the development of society and the course of home and foreign policy of the USSR, directs the great constructive work of the Soviet people and imparts a planned, systematic and theoretically substantiated character to their struggle for the victory of communism'.

9. Democratic Centralism The Constitution stated that 'the Soviet state is organised and functions on the principle of democratic centralism, namely the electiveness of all bodies of state authority from the lowest to the highest, their accountability to the people and the obligation of lower bodies to observe the decisions of higher ones. Democratic centralism combines central leadership with local initiative and creative activity and with the responsibility of each state body and official for the work entrusted to them'.

This principle was applicable to governmental organisation; hierarchy of the Soviets and the Communist Party organisation.

10. Fundamental Rights The Constitution also provided for a large number of economic, social, personal, cultural and political rights to the citizens of the USSR. These rights were guaranteed to all the citizens of the country equally irrespective of nationality, race, sex, and so on. The form of the rights granted to the citizens was socialist, not personal, that is they were meant for the establishment of a socialist system in the USSR. Thus, the enjoyment of these rights by the citizens was not to detriment the interests of society or state or the rights of other citizens.

The list of fundamental rights provided by the Soviet Constitution are:

(i) Right to work
(ii) Right to rest and leisure
(iii) Right to health protection
(iv) Right to maintenance in old age, sickness and disability
(v) Right to housing
(vi) Right to education
(vii) Right to enjoy cultural benefits
(viii) Freedom of scientific, technical and artistic work
(ix) Right to take part in the management and administration of State and public affairs
(x) Right to submit proposals to the State bodies and public and social organisations
(xi) Freedom of speech, press, assembly, meetings, street processions and demonstrations
(xii) Right to associate in public and social organisations
(xiii) Freedom of conscience
(xiv) Right to seek family protection
(xv) Right to inviolability of person and house
(xvi) Right of privacy of citizens
(xvii) Right to protection by the court
(xviii) Right to appeal against the actions of the officials, state bodies and public bodies

11. Fundamental Duties Apart from the fundamental rights, the Constitution also provided for fundamental duties. The Constitution stated that the exercise of these rights and freedoms by the citizens was inseparable from the performance of these duties and obligations. The following is the list of the fundamental duties contained in the Constitution:

(i) To observe the Constitution of the USSR and Soviet laws
(ii) To observe labour discipline
(iii) To preserve and protect the socialist property
(iv) To safeguard the interests of the Soviet state
(v) To defend the socialist motherland
(vi) To render military service
(vii) To respect the national dignity of other citizens
(viii) To respect the rights and lawful interests of other persons
(ix) To protect nature and conserve its richness
(x) To preserve historical monuments and other cultural values
(xi) To promote and strengthen world peace

RUSSIAN CONSTITUTION

Russia was the largest constituent unit of the former USSR. It was 75 per cent of the total area of the former USSR and had 50 per cent of its total population. It also contributed about 70 per cent to the total agricultural and industrial output of the former USSR.

After the dissolution of the USSR in December 1991, Russia adopted a new Constitution on 20 December 1993 and thus, established a new politico-administrative system.

The salient features of the Russian Constitution are mentioned as follows:

1. It declares Russia as a sovereign and multi-ethnic republican state.
2. It provides for a federal state. The Russian Federation consists of 21 Republics, 6 Territories (*Krai*), 49 Regions (*Oblast*), 10 Autonomous Areas (*Avtonomy Okrug*),

2 Cities (Moscow and St. Petersburg) of federal status, and Birobijan (Jewish Autonomous Region).

3. It establishes a liberal-democratic order and guarantees fundamental rights to the citizens. Thus, it discards the earlier totalitarian system.
4. It introduces multi-party system and ensures free and fair periodic elections.
5. It provides for the division of the State power among the legislature, executive, and judiciary. These three organs are independent of one another.
6. It establishes bicameral legislature (Federal Assembly) consisting of Federation Council (upper House) and State Duma (lower House). The Federation Council consists of 178 members, two from each territorial units of the Russian Federation. The State Duma consists of 450 members who are directly elected for a period of four years.
7. It declares President of the Russian Federation as head of the State. The President is elected for a term of four years by universal and direct suffrage. He/she is head of the executive as well as Commander-in-Chief of the armed forces.
8. It authorises the President of the Republic to appoint the Chairman of the Government as the Prime Minister. The President is to appoint other Federal Ministers on the advice of the Prime Minister. He/she can also dismiss the Prime Minister or any other Federal Minister.
9. It provides for a 19-member constitutional court. Its function is to decide the constitutionality of the Presidential decrees, Government orders and laws of the Federal Assembly.
10. It authorises the Russian legislature (Federal Assembly) to remove the President by way of impeachment, on the charge of high treason or grave crime. The resolution of impeachment should be approved by both the Houses by two-third majority.

CHINESE CONSTITUTION

After the Communist Revolution (New Democratic Revolution) led by the Communist Party of China (CPC) with Chairman Mao Zedong as its leader, the People's Republic of China was formed in 1949. Since then, China adopted four constitutions i.e., in 1954, 1975, 1978 and 1982.

The fourth and the present constitution of 1982 was drafted by the National Constitution Revision Committee set-up by the National People's Congress (NPC). The draft constitution, after it was approved by the Standing Committee of the NPC, was submitted to the people for nation wide discussions. Finally, the draft constitution was adopted by the NPC and promulgated for implementation by the announcement of the NPC on December 4, 1982. Its salient features are as follows:

1. Written Constitution The Chinese Constitution is a written constitution. It consisted (originally) of a Preamble and 138 Articles divided into four chapters. These are mentioned in Table 92.4.

2. Rigid Constitution The Chinese Constitution is rigid in nature. It contains a special procedure for its amendment. It can be amended by the NPC by a majority of two-thirds of its membership. But, the amendments to the constitution must be proposed either by the Standing Committee of the NPC or by one-fifth (or more) of the total deputies (members) of the NPC.

3. Socialist Constitution The Chinese Constitution is socialistic in nature and lays down the foundation of a socialist state. It declares that China is a socialist state governed by a people's democratic dictatorship that is led by the working class and based on an alliance of workers and peasants. It further declares that the socialist system is the fundamental system of China; leadership by the CPC is the defining feature of socialism with Chinese Characteristics; and it is prohibited for any organization or individual to damage the socialist system.

Table 92.4 Chinese Constitution at a Glance (as Amended till now).

Chapter Number	Chapter Heading	Articles covered
I	General Principles	1 to 32
II	Fundament Rights and Obligations of Citizens	33 to 56
III	State Institutions Section 1 – The National People's Congress Section 2 – The President of the People's Republic of China Section 3 – The State Council Section 4 – The Central Military Commission Section 5 – Local People's Congresses at All Levels and Local People's Governments at All Levels Section 6 – Autonomous Organs of Ethnic Autonomous Areas Section 7 – Commissions of Supervision Section 8 – People's courts and People's Procuratorates	57 to 140
IV	The National Flag, National Anthem, National Emblem and the Capital	141 to 143

4. Unitary Constitution The Chinese Constitution establishes a unitary state rather than a federal state. The Preamble declares that China is a unitary multinational state built up jointly by the people of all its nationalities. There in no division of powers between the central and provincial governments. All powers are vested on the single supreme central government located at Beijing. The provincial governments derive their authority from the delegation made by the central government. They are created or abolished by the central government only for administrative convenience.

5. Parliamentary Government The Chinese constitution provides for a parliamentary form of government. According to the constitution, the State Council of China, namely, the Central People's Government, is the executive organ of the highest state organ of power (i.e., NPC) and it is the highest state administrative organ. The State Council, headed by a Premier, is responsible to the NPC and reports to the NPC on its work. The Premier is choosen by the NPC based on the nomination of the President of China and the other members of the State Council are choosen by the NPC based on the nomination of the Premier. The President of China, pursuant to decisions of the NPC, appoints or removes the Premier and other members of the State Council. The Premier directs the work of the State Council and presides over its meetings. But, his/her authority cannot be compared with that of the Indian Prime Minister or the British Prime Minister.

The head of the state, i.e., the President of China, is an elected executive. He/she is elected by the NPC for a term of 5 years. Any citizen of China who has the right to vote and stand for election and who has reached the age of 45 is eligible for election as the President. However, the President is only a ceremonial executive and not a real executive. Hence, his/her authority cannot be compared with that of the American President.

6. Unicameralism The Chinese constitution provides for a unicameral legislature, i.e., the NPC. Constitutionally, the NPC is the highest state organ of power and exercises the legislative power of the State. It is composed of deputies elected from the provinces, autonomous regions, cities directly under the jurisdiction of central government, special administrative regions and armed forces. The number of deputies and the procedures for their election are prescribed by law. Hence,

their number varies from time to time; it is approximately 3,000. The NPC is elected for a term of 5 years. Its permanent organ is the Standing Committee consisting of approximately 200 members.

7. Communist Party Leadership The Chinese constitution recognizes a multi party system in the country. But, at the same time, it also clearly establishes the leadership role of the CPC. The Preamble says that the system of multi-party cooperation and political consultation under the leadership of the CPC will continue and develop long into the future. It also says that the Chinese people of all ethnic groups will continue, under the leadership of the CPC and the guidance of Marxism-Leninism, Mao Zedong. Thought, Deng Xiaoping Theory, the Theory of Three Represents, the Scientific Outlook on Development and Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, to uphold the people's democratic leadership, stay on the socialist road and develop the socialist market economy. Further, Article 1 declares that leadership by the CPC is the defining feature of socialism with Chinese characteristics.

8. Democratic Centralism The Chinese constitution declares that the state institutions shall practice the principle of democratic centralism. The NPC and the local people's congresses at all levels are created through democratic election and are responsible to the people and are also subject to their oversight. Also, all administrative, supervisory, adjudiciatory and procuratorial organs of the state are created by the people's congresses and are responsible to them and are also subject to their oversight. Further, the division of functions and powers between the central and local state institutions should honour the principle of giving full play to the initiative and motivation of local authorities under the unified leadership of the central authorities.

9. Fundamental Rights The constitution provides for a large number of rights to the citizens of China. They include civil, political, personal, economic, social and cultural rights. But, the enjoyment of these rights by the citizens should not undermine the interests of the state or society or collectives or the rights of other citizens. The list of rights is as follows:

(i) Right to equality before the law
(ii) Right to vote and stand for election
(iii) Freedom of speech, press, assembly, association, procession and demonstration
(iv) Freedom of religious belief
(v) Rights to inviolability of person and house
(vi) Right to personal dignity
(vii) Freedom and confidentiality of correspondence
(viii) Right to criticize
(ix) Right to file complaints
(x) Right to receive compensation
(xi) Right to work
(xii) Right to rest
(xiii) Right to livelihood of retirees
(xiv) Right to material assistance in old age, sickness and disability
(xv) Right to education
(xvi) Freedom of scientific research, literary and artistic creation and other cultural pursuits.
(xvii) Right of women to enjoy equal rights with men in all spheres of life: political, economic, cultural, social and familial.
(xviii) Right to protection of marriage and family
(xix) Protection of the rights of Chinese nationals living abroad

10. Fundamental Duties In addition to the above fundamental rights, the Chinese constitution also provides for the fundamental duties of citizens. The constitution says that every citizen must fulfill the duties prescribed by it. These are as follows:

(i) To safeguard national unity and solidarity
(ii) To abide by the constitution and the law, keep state secrets, protect public property, observe discipline in the work place, observe public order and respect social morality.
(iii) To safeguard the security, honour and interests of the motherland.

(iv) To defend the motherland and resist aggression
(v) To perform military service or join the militia
(vi) To pay taxes in accordance with law
(vii) To work, receive education and practice family planning

SWISS CONSTITUTION

Till now, Switzerland adopted three constitutions, i.e., 1848, 1874 and 1999. The constitution of 1848 established the federal state in Switzerland. This constitution was replaced by the next constitution of 1874. After a long period of 125 years, this second constitution was replaced by the third constitution of 1999.

At present, the third constitution is continuing in Switzerland. It was adopted by the Federal Assembly on 18th December, 1998. Subsequently, it was approved by the people and the cantons (i.e., states) on 18th April, 1999. Finally, it came into force on 1st January, 2000. Its salient features are explained below:

1. Written Constitution The Swiss constitution is a comprehensive written document. Originally, it consisted of a preamble and 196 Articles divided into six titles (i.e., parts). These are mentioned in Table 92.5.

2. Rigid Constitution The Swiss Constitution is rigid in nature. It contains a special procedure for its amendment. It provides for two types of revision (amendment) i.e., total revision and partial revision:

(i) A total revision of the constitution may be proposed by the people or by either of the two chambers of the Federal Assembly or may be decreed by the Federal Assembly. If the initiative emanates from the people or if the two chambers are unable to agree, then the people will decide on whether a

Table 92.5 Swiss Constitution at a Glance (as Amended till now).

Title Number	Title Heading	Articles covered
I	General Provisions	1 to 6
II	Fundamental Rights, Citizenship and social Goals Chapter 1 – Fundamental Rights Chapter 2 – Citizenship and Political Rights Chapter 3 – Social Goals	7 to 41
III	Confederation, Cantons and Communes Chapter 1 – Relations between the Confederation and the Cantons Chapter 2 – Powers Chapter 3 – Financial System	42 to 135
IV	The People and the Cantons Chapter 1 – General Provisions Chapter 2 – Initiative and Referendum	136 to 142
V	Federal Authorities Chapter 1 – General Provisions Chapter 2 – Federal Assembly Chapter 3 – Federal Council and Federal Administration Chapter 4 – Federal Supreme Court and other Judicial Authorities	143 to 191c
VI	Revision of the Federal Constitution and Transitional Provisions Chapter 1 – Revision Chapter 2 – Transitional Provisions	192 to 197

total revision should be carried out. If the people vote for a total revision, then new elections are held to both the chambers.

(ii) A partial revision of the constitution may be requested by the people or may be decreed by the Federal Assembly. The partial revision must respect the principle of cohesion of subject matter. Further, the popular initiative for partial revision must also respect the principle of consistency of form.

The totally revised or the partially revised constitution comes into force when it is approved by the people and the cantons.

3. Federal Constitution The Swiss constitution provides for a federal republic consisting of 26 units called as cantons. The powers are divided between the federal government and the cantons. The powers of the federal government are specified while the residuary powers are given to the cantons as in the case of the USA. Each canton has its own constitution, legislature, executive and judiciary. The cantons are of two types, namely, full cantons and half cantons. Out of the total 26 cantons, 20 are full cantons and 6 are half cantons. The half cantons were formed as a result of split in the cantons for settling internal conflicts due to religion or language or some other factor. They differ in the following two respects:

(i) Each half canton has one representative in the upper house of the Federal Assembly whereas each full canton has two representatives.

(ii) Each half canton has a half vote on the proposals for total or partial revision (amendment) of the constitution whereas each full canton has one vote.

4. Council Model of Government The Swiss constitution provides for neither the British parliamentary system of government nor the American presidential system of government. It, on the other hand, provides for a unique system of executive called as the Federal Council (Bundesrat) which is a plural (collegial) executive. The features of the Swiss Council Model of Government are as follows:

(i) The Federal Council has seven members who are elected by the Federal Assembly following each general election to the National Council.

(ii) The members of the Federal Council are elected for a term of four years. Any Swiss citizen eligible for election to the National Council may be elected to the Federal Council.

(iii) In electing the Federal Council, care must be taken to ensure that the various geographical and language regions of the country are appropriately represented.

(iv) The President and the Vice-President of the Federal Council are elected by the Federal Assembly from the members of the Federal Council for a term of one year. Re-election for the following year is not permitted. The President may not be elected Vice-President for the following year.

(v) The members of the Federal Council act both collectively as well as individually. Collectively, they make all the executive decisions of the federal government and individually, they act as the heads of the departments of the federal government.

(vi) All the seven members of the Federal Council are vested with co-equal authority. The President does not possess any special powers. He/she is only a primus inter pares (first among equals). He/she acts as a nominal head of the Swiss federal republic and performs the ceremonial duties. Hence, his/her authority cannot be compared with that of the British Prime Minister or the American President.

(vii) The members of the Federal Council are not the members of the Federal Assembly. However, they participate in the deliberations of the Federal Assembly but without the right to vote. Further, they cannot be removed from

their office by the Federal Assembly either by passing a motion of no-confidence as in the case of British Cabinet or by passing a resolution of impeachment as in the case of American President.

(viii) The Federal Council is non-partisan in nature. It is composed of the members who belong to different political parties. But, they do not work on party lines.

From the above, it is clear that the Swiss executive is basically different from both, the British executive and the American executive. According to C.F. Strong, the Swiss executive system combines the merits and excludes the defects of both the parliamentary and presidential executive systems.

5. Bicameralism The Swiss Federal Legislature called the Federal Assembly is bicameral, that is, it consists of two houses, namely, the Council of States and the National Council. The Council of States is the upper house (chamber) and while the National Council is the lower house (chamber). The Council of States is composed of 46 representatives of the cantons. The full cantons elect two representatives each while the half cantons elect one representative each. This means that the cantons, irrespective of their size and population, are provided equal representation in the Council of States like that of the American Senate. The cantons determine the rules for the election of their representatives to the Council of States. Hence, the mode of election and the tenure of the representatives to the Council of States varies from canton to canton. In some cantons, they are elected by the cantonal legislatures while in some other cantons, they are elected directly by the people. Similarly, their tenure also varies from one year to four years.

The National Council is composed of 200 representatives of the people. These representatives are elected directly by the people according to a system of proportional representation. Their term of office is four years. The two chambers in Switzerland are of equal standing and have equal powers. C.F. Strong, in this context, observed: "The Swill legislature like the Swiss executive is unique; it is the only legislature in the world the powers of whose upper house are in no way different from those of the lower house".

6. Direct Democracy The Swiss constitution provides for the operation of the direct democracy and thereby enables the people to directly participate in the affairs of the state. It specifies two direct democratic devices, namely, referendum and initiative. There are two types of referendum – mandatory and optional.

(i) **Mandatory Referendum:** The following must be put to the vote of the people and the cantons:
   (a) Amendments to the constitution.
   (b) Accession to organizations for collective security or to supranational communities.
   (c) Emergency federal acts that are not based on a provision of the constitution.

   The following are submitted to a vote of the people:
   (a) Popular initiatives for a total revision of the constitution.
   (b) Popular initiatives for a partial revision of the constitution in the form of a general proposal that have been rejected by the Federal Assembly.
   (c) The question of whether a total revision of the constitution should be carried out, in the event that there is disagreement between the two chambers of the Federal Assembly.

(ii) **Optional Referendum:** If 50,000 voters or eight cantons request it, the following are submitted to a vote of the people:
   (a) Federal acts.
   (b) Emergency federal acts whose term of validity exceeds one year.
   (c) Federal decrees, if the constitution or an act so requires.
   (d) International treaties of specified categories.

Under the constitution, the device of initiative is allowed, at the federal level, only in the

case of constitutional amendments and not in the case of federal laws or international treaties.

Any 1,00,000 voters may propose a total revision of the constitution. Similarly, any 1,00,000 voters may request a partial revision of the constitution. A popular initiative for the partial revision of the constitution may take the form of a general proposal (i.e., unformulative initiative) or of a specific draft of the provisions proposed (i.e., formulative initiative).

7. Triple Citizenship Under the Swiss constitution, the citizenship is three-fold, i.e., the citizenship of the commune (municipality), the canton and the federation. The constitution declares that any person who is a citizen of a commune and of the canton to which that commune belongs, is a Swiss citizen. This means that no person can be a citizen of Switzerland without being a citizen of a canton and no person can be a citizen of a canton without being a citizen of a commune. In Switzerland, the communal citizenship is regarded as more valuable than the cantonal and federal citizenship.

8. Fundamental Rights The Swiss constitution contains an elaborate list of fundamental rights of the citizens. They include civil, social, economic, political and personal rights. These are mentioned below:

(i) Protection of human dignity
(ii) Right to equality before the law
(iii) Protection against arbitrary conduct and principle of good faith
(iv) Right to life and to personal freedom
(v) Protection of children and young people
(vi) Right to assistance when in need
(vii) Right to privacy
(viii) Right to marry and to have a family
(ix) Freedom of religion and conscience
(x) Freedom of expression and of information
(xi) Freedom of the media
(xii) Freedom to use any language
(xiii) Right to basic education
(xiv) Freedom of research and teaching
(xv) Freedom of artistic expression
(xvi) Freedom of assembly
(xvii) Freedom of association
(xviii) Freedom of domicile
(xix) Protection against expulsion, extradition and deportation
(xx) Right to property
(xxi) Economic freedom
(xxii) Right to form professional associations
(xxiii) Right to access to the courts
(xxiv) Right to petition
(xxv) Political rights

9. Social Goals of the Government The Swiss constitution, in addition to the fundamental rights of the citizens, also contains the list of social goals of the government. The federal and cantonal governments shall endeavour to achieve these social goals within the scope of their constitutional powers and the resources available to them. But, no direct right to state benefits may be established on the basis of these social goals. These are as follows:

(i) To ensure that every person has access to social security and the health care.
(ii) To ensure that families are protected and encouraged as communities of adults and children.
(iii) To ensure that every person can earn their living by working under fair conditions.
(iv) To ensure that every person can find suitable accommodation.
(v) To ensure that children and young people can obtain education and undergo training.
(vi) To ensure that children and young people are supported in their social, cultural and political integration.
(vii) To ensure that every person is protected against the economic consequences of old-age, invalidity, illness, accident, unemployment, maternity, being orphaned and being widowed.

In this Part...

APPENDIX I Articles of the Constitution (1–395)

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1. Name and territory of the union
2. Admission or establishment of new states
2A. Sikkim to be associated with the Union (Repealed)
3. Formation of new states and alteration of areas, boundaries or names of existing states
4. Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters

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5. Citizenship at the commencement of the Constitution
6. Rights of citizenship of certain persons who have migrated to India from Pakistan
7. Rights of citizenship of certain migrants to Pakistan
8. Rights of citizenship of certain persons of Indian origin residing outside India
9. Persons voluntarily acquiring citizenship of a foreign state not to be citizens
10. Continuance of the rights of citizenship
11. Parliament to regulate the right of citizenship by law

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12. Definition of state
13. Laws inconsistent with or in derogation of the fundamental rights
14. Equality before law
15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
16. Equality of opportunity in matters of public employment
17. Abolition of untouchability
18. Abolition of titles
19. Protection of certain rights regarding freedom of speech, etc.
20. Protection in respect of conviction for offences
21. Protection of life and personal liberty
21A. Right to elementary education
22. Protection against arrest and detention in certain cases
23. Prohibition of traffic in human beings and forced labour

24. Prohibition of employment of children in factories, etc.
25. Freedom of conscience and free profession, practice and propagation of religion
26. Freedom to manage religious affairs
27. Freedom as to payment of taxes for promotion of any particular religion
28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions
29. Protection of interests of minorities
30. Right of minorities to establish and administer educational institutions
31. Compulsory acquisition of property (Repealed)
31A. Saving of laws providing for acquisition of estates, etc.
31B. Validation of certain acts and regulations
31C. Saving of laws giving effect to certain directive principles
31D. Saving of laws in respect of anti-national activities (Repealed)
32. Remedies for enforcement of fundamental rights including writs
32A. Constitutional validity of State laws not to be considered in proceedings under article 32 (Repealed)
33. Power of Parliament to modify the fundamental rights in their application to forces, etc.
34. Restriction on fundamental rights while martial law is in force in any area
35. Legislation to give effect to some of the provisions of fundamental rights

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36. Definition of State
37. Application of the directive principles
38. State to secure a social order for the promotion of welfare of the people
39. Certain principles of policy to be followed by the State
39A. Equal justice and free legal aid
40. Organisation of village panchayats
41. Right to work, to education, and to public assistance in certain cases
42. Provision for just and humane conditions of work and maternity relief
43. Living wage, etc. for workers
43A. Participation of workers in management of industries
43B. Promotion of co-operative societies
44. Uniform civil code for the citizens
45. Provision for early childhood care and education to children below the age of six years
46. Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections
47. Duty of the state to raise the level of nutrition and the standard of living and to improve public health
48. Organisation of agriculture and animal husbandry
48A. Protection and improvement of environment and safeguarding of forests and wild life
49. Protection of monuments and places and objects of national importance
50. Separation of judiciary from executive
51. Promotion of international peace and security

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51A. Fundamental duties

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52. The President of India
53. Executive power of the Union
54. Election of President
55. Manner of election of President
56. Term of office of President
57. Eligibility of re-election
58. Qualifications for election as President
59. Conditions of President's office
60. Oath or affirmation by the President
61. Procedure for impeachment of the President
62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy
63. The Vice-President of India

64. The Vice-President to be ex-officio chairman of the council of states
65. The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President
66. Election of Vice-President
67. Term of office of Vice-President
68. Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.
69. Oath or affirmation by the Vice-President
70. Discharge of President's functions in other contingencies
71. Matters relating to, or connected with, the election of a President or Vice-President
72. Power of the President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases
73. Extent of executive power of the Union

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74. Council of ministers to aid and advise President
75. Other provisions as to ministers
76. Attorney-General for India
77. Conduct of business of the Government of India
78. Duties of Prime Minister as respects the furnishing of information to the President, etc.

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79. Constitution of Parliament
80. Composition of the council of states
81. Composition of the House of the people
82. Readjustment after each census
83. Duration of Houses of Parliament
84. Qualification for membership of Parliament
85. Sessions of Parliament, prorogation and dissolution
86. Right of President to address and send messages to Houses
87. Special address by the President
88. Rights of ministers and Attorney General as respects Houses
89. The chairman and deputy chairman of the council of states
90. Vacation and resignation of, and removal from, the office of deputy chairman
91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman
92. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration
93. The Speaker and Deputy Speaker of the House of the people
94. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker
95. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker
96. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration
97. Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker
98. Secretariat of Parliament
99. Oath or affirmation by members
100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum
101. Vacation of seats
102. Disqualifications for membership
103. Decision on questions as to disqualifications of members
104. Penalty for sitting and voting before making oath or affirmation under Article 99 or when not qualified or when disqualified
105. powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof
106. Salaries and allowances of members
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108. Joint sitting of both Houses in certain cases
109. Special procedure in respect of money bills
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115. Supplementary, additional or excess grants
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117. Special provisions as to financial bills
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135. Jurisdiction and powers of the federal court under existing law to be exercisable by the Supreme Court
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154. Executive power of state
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156. Term of office of governor
157. Qualifications for appointment as governor
158. Conditions of governor's office
159. Oath or affirmation by the governor
160. Discharge of the functions of the governor in certain contingencies
161. Power of governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases
162. Extent of executive power of state

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164. Other provisions as to ministers
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166. Conduct of business of the government of a state
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169. Abolition or creation of legislative councils in states
170. Composition of the legislative assemblies
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172. Duration of state legislatures
173. Qualification for membership of the state legislature
174. Sessions of the state legislature, prorogation and dissolution
175. Right of governor to address and send messages to the House of Houses
176. Special address by the governor
177. Rights of ministers and Advocate General as respects the Houses
178. The Speaker and Deputy Speaker of the legislative assembly
179. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker
180. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, speaker
181. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration
182. The Chairman and Deputy Chairman of the legislative council
183. Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman
184. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman
185. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration
186. Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman
187. Secretariat of state legislature
188. Oath or affirmation by members
189. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum
190. Vacation of seats
191. Disqualifications for membership
192. Decision on questions as to disqualifications of members
193. Penalty for sitting and voting before making oath or affirmation under Article 188 or when not qualified or when disqualified
194. Powers, privileges, etc, of the House of legislatures and of the members and committees thereof
195. Salaries and allowances of members
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